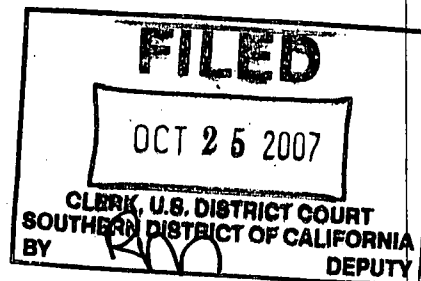


CRAIG SMITH
 (Name)
5-21-18
P.O. BOX 799005
 (Address)
SAN DIEGO, CA. 92179
 (City, State, Zip)
109268
 (CDC Inmate No.)

2254	1983	<input checked="" type="checkbox"/>
FILING FEE PAID		
Yes	No	<input checked="" type="checkbox"/>
HYP MOTION FILED		
Yes	No	<input checked="" type="checkbox"/>
COPIES SENT TO		
Court	Proba	<input checked="" type="checkbox"/>



United States District Court Southern District of California

CRAIG SMITH
 (Enter full name of plaintiff in this action.)

Plaintiff,

v.

DAN LINK, NICHOLAS GONZALEZ
JUDGE-ALBERT HARTUNIAN III
CITY OF SAN DIEGO
COUNTY OF SAN DIEGO
 (Enter full name of each defendant in this action.)

Defendant(s).

07CV 2077BTM RBB

Civil Case No. _____
 (To be supplied by Court Clerk)

Complaint under the
 Civil Rights Act
 42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

REL 42 U.S.C.A. § 1981, CIVIL RIGHTS ACT OF 1964

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, CRAIG SMITH
 (print Plaintiff's name)
 _____, who presently resides at RICHARD J. DONOVAN
 (mailing address or place of confinement)

CORRECTIONAL FACILITY, were violated by the actions

of the below named individuals. The actions were directed against Plaintiff at CITY OF SAN DIEGO,

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO on (dates) 12-1-2005 THRU 10-30-06, and _____
 (institution/place where violation occurred) (Count 1) (Count 2) (Count 3)

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant NICHOLAS GONZALEZ resides in SAN DIEGO,
(name) (County of residence)
 and is employed as a SAN DIEGO CITY POLICE OFFICER. This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: AS THE ARRESTING OFFICER, WITNESS, AND APPOINTED INVESTIGATOR

Defendant DAN LINK resides in SAN DIEGO,
(name) (County of residence)
 and is employed as a COUNTY DISTRICT ATTORNEY. This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: AS A COUNTY OFFICER, AND DISTRICT ATTORNEY, PROSECUTION IN CASE# SCD 195342,
SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

Defendant ALBERT HARUTUNIAN III resides in SAN DIEGO,
(name) (County of residence)
 and is employed as a HONORABLE JUDGE. This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: AS THE HONORABLE JUDGE, IN SUPERIOR COURT OF CALIFORNIA IN AND FOR THE
COUNTY OF SAN DIEGO, IN CASE# SCD 195342 IN THE RETRIAL/SECOND TRIAL

Defendant _____ resides in _____,
(name) (County of residence)
 and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
 his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: _____

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: 4th Amend. - UNREASONABLE SEIZURES, FALSE
 (E.g., right to medical care, access to courts,

ARREST, FALSE IMPRISONMENT, 5th Amend. - DUE PROCESS, DEPRIVED OF LIBERTY, MALEVOLENT PROSECUTION, FABRICATING EVID.
 due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,
 etc.) 14th Amend. - DUE PROCESS, CRUEL AND UNUSUAL PUNISHMENT 8th Amend

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

ON DECEMBER 1, 2005, A THURSDAY EVENING, BUT THE PLAINTIFFS WERE ON AS FOR WORK,
AN AVID POOL PLAYER "BILLIARDS", I INQUIRED TO MY BROTHER "KEN SMITH", AFTER HE GOT OFF WORK
TO GO PLAY, HE DECLINE FOR HE WAS TIRED, PLAINTIFF DECIDED TO GO ON HIS OWN TO ETNA'S BAR,
WHICH PLAINTIFF FREQUENT ONCE OR TWICE A MONTH, BEING A THURSDAY NIGHT, I STOPPED AND
PURCHASE A PINT OF BRANDY AND SEVEN-UP, IN CASE NOTHING WAS HAPPENING, I ARRIVED AT ETNA'S
ABOUT 9:30pm OR SO, LILY SALVAGE THE BARTENDER WAS ON DUTY, THE NIGHT WAS SLOW, I WAS
CHALLENGED TO SHOOT POOL BY A GUY, I LATER LEARN WAS ALPHONSION DENG, IN TRIAL LILY TESTIFIED
THAT DENG HAD BEEN BELLIGERENT SINCE HIS ARRIVAL, I WON A GAME, THE FIRST GAME AND DENG
BOUGHT ME A SCREW DRIVER, MY FIRST DRINK OF THE NIGHT, THE SECOND GAME I SCRATCH ON THE
EIGHT BALL, DENG ARGUE ABOUT HIM BUYING ME ANOTHER DRINK, WHICH I HAD A SECOND DRINK,
HE THEN ARGUED WITH LILY ABOUT HIS BILL, I TRIED TO CALM HIM DOWN, LILY EVENTUALLY ENDED
UP USING A POOL STICK TO GET DENG OUT OF THE BAR, BY GENTLY LAYING IT ON HIS CHEST AND WALKING
HIM OUT, THIS WAS ABOUT 10:50pm, LILY HAD LOCKED THE DOOR BEHIND HIM, SHE CLOSED THE BAR AT
11:00pm, ABOUT 11:10pm SHE ASKED ME AND ANOTHER PATRON TO EXIT THE BAR, WHEN I STEP OUTSIDE AND
ON THE PARKING LOT, I STARTED WALKING TOWARD MY CAR, DENG WAS THERE WAITING, HE APPROACH ME
MUTTERING, I WAS 44 YEARS OLD, DENG WAS 24", HE GRABBED MY SHIRT, I SAID LET GO, HE SWUNG
AND HIT ME IN THE EYE, IN DEFENSE, I WAS ABLE PUT DENG ON THE GROUND TWICE, BUT HE WOULD
GET BACK UP QUICKLY, I FINALLY WAS ABLE TO GET IN MY CAR AND LEAVE HEADING HOME,

WHAT I DID NOT KNOW WAS DENG HAD GOT UP, GOT IN HIS CAR AND WAS CHASING ME, HE
LIVED IN THE OPPOSITE DIRECTION, A MILE PLUS LATER, I WAS AT A STOP SIGN, WHEN A LIGHT
IN MY REARVIEW MIRROR, AND THEN IT WAS APPARENT THE VEHICLE WAS NOT STOPPING, I TRIED
TO STEP ON THE GAS PEDAL, BUT WAS TOO LATE, THE CAR CRASH INTO ME AT ABOUT 35 TO 40 MPH
THIS CRASH HAPPEN ABOUT 11:25pm, I IMMEDIATELY SUSPECTED IT WAS DENG, AND I KNEW HE
WAS NOT TRYING TO FIGHT AGAIN, PER THE FIGHT HE STARTED JUST PRIOR, HE LOST

1 HE HAD HIT ME AT A HIGH SPEED ON THE MOSTLY RIGHT REAR END, MY CAR WAS A 2000 BLACK
2 MUSTANG CONVERTIBLE, BUT TO TAKE HIS OWN CAR AND USE IT AS A BATTERING RAM, HE WAS SEEKING
3 DEADLY VIOLENT HARM, I FEARED HE WAS ON SOME KIND OF RAGE, MY CAR HAD SPUN ALL THE
4 WAY AROUND, FACING THE OPPOSITE DIRECTION, HIS CAR WAS ON THE OTHER SIDE OF THE INTERSECTION,
5 I LOOKED BACK AT HIS VEHICLE AND COULD SEE A FIGURE BEHIND THE DRIVER SEAT, I DID NOT
6 KNOW IF IT WAS MORE THAN ONE PERSON OR NOT, I THEN TRIED TO DRIVE AWAY, BUT MY CAR WAS
7 INOPERABLE, I START THINKING MAYBE HE HAS A GUN OR SOMETHING, I THOUGHT I GOT TO GET OUT OF
8 THIS CAR, BUT THEN I WAS THINKING IT COULD BE SOMEONE WITH HIM ALSO, I COULD STEP OUT OF THE
9 CAR AND GET SHOT, THEN I WAS THINKING THEY COULD SHOOT ME IN THE CAR, I WAS LITERALLY
10 SHAKING, THEN I REACHED IN THE BACK SEAT AND GRABBED THE BAG WITH THE BRANDY AND
11 SEVEN-UP, LEANING OVER THE CENTER CONSOLE, RIGHT ABOVE THE PASSENGER SEAT, I POURED
12 THE PREVIOUSLY OPENED BOTTLE IN A COFFEE MUG, WHICH THE PINT HAD ALMOST FILLED IT UP,
13 A 16 oz MUG, I THEN POURED SEVEN-UP, IT OVERFLOWED AND I SPILL SOME ON THE FRONT
14 PASSENGER SEAT, I TOOK SEVERAL BIG GULPS, THE MUG WAS ALMOST EMPTY, I THEN PLACED
15 THE MUG ON THE FLOOR BEHIND THE FRONT PASSENGER SEAT, I CAUTIOUSLY GOT OUT OF THE CAR
16 AND CAUTIOUSLY WALKED AWAY FROM THE SCENE

17 I WAS ABOUT A BLOCK AWAY, WHEN A CAR DROVE UP WITH SOME MALES INSIDE, THEY SAID
18 SOMETHING LIKE, I SAW THE WHOLE THING MAN HE CREAMED YOU, OR SOMETHING LIKE THAT, THIS
19 MADE ME GO BACK TO THE SCENE, I WALKED BACK AND WAS PACING ON THE CURB AREA, SOME 20
20 FEET AWAY FROM MY CAR, KEYS IN MY POCKET, THE CAR LIGHTS WERE OFF, DURING THE WHOLE
21 NIGHT I NEVER LOOKED INSIDE THE OTHER VEHICLE, PER I DID NOT TRUST THAT ACTION, ABOUT 11:50
22 OR SO, AN AMBULANCE ARRIVED, I DENIED SERVICE, BUT DENG WAS TAKEN AWAY EVENTUALLY,
23 THE SAN DIEGO POLICE ARRIVED A FEW MINUTES AFTER THE AMBULANCE, BY THIS TIME I WAS STARTING
24 TO FEEL THE EFFECTS OF THE ALCOHOL I HAD QUICKLY GULPED, OFFICER NICHOLAS GONZALEZ, HE
25 ASKED ME WHAT HAPPEN, I TOLD HIM THE OTHER VEHICLE CRASH INTO ME, WHILE I WAS AT THE STOP
26 SIGN, OFFICER GONZALEZ THEN PROCEEDED TO INSPECT THE SCENE AND GET INSURANCE INFO. HE NOTICE
27 THE LIQUID ON THE PASSENGER FRONT SEAT, AND ASKED WHAT WAS IT, I TOLD HIM ALCOHOL I HAD,
28 HE THEN HAD ME STEP BACK, HE FINISHED, THEN CAME AND ASKED ABOUT THE EVENTS PRIOR TO THE

1 CRASH, THEN HAD ME DO A FIELD SOBRIETY TEST, THE EFFECT OF THAT ALCOHOL WAS INCREASING BY THE
 2 MINUTE, THE MORE AS TIME WENT ON THE WORST I GOT, WHEN HE ASKED ME ABOUT MY DRIVER LICENSE
 3 PRIOR TO THE TEST, I TOLD HIM I HAD A VAND LICENSES, WHILE I WAS LOOKING IN MY WALLET, HE
 4 OBSERVED A MISSOURI'S DRIVER LICENSE, MY HOME TOWN, HE TOOK THEM, I TOLD OFFICER GONZALEZ
 5 ABOUT I HAD THE FIGHT WITH DENG, AFTER THE TEST AT ABOUT 12:05 OR SO, HE ARRESTED MYSELF FOR
 6 DRIVING UNDER THE INFLUENCE, OFFICER GONZALEZ THEN TOOK ME TO THE STATION AND AT 12:27 AM
 7 12-2-07, OFFICER DECSARI RAN A BREATH INTOXILIZER TEST A READING OF .17, AND I EVENTUALLY
 8 PASS OUT. WHAT WAS CRUCIAL IS BEFORE THE ARREST AND BEFORE HIS CONDUCT WAS IN A
 9 MANNER SUSPECTING DRIVING UNDER THE INFLUENCE, HE HAD ARA A CHECK ON MY I.D., AND HE
 10 SAID YOUR ON PAROLE, HIS DEMEANOR CHANGED, AND ALL DURING BOTH TRIALS, THEIR WAS NO
 11 EMPATHY OF THE PLAINTIFF BEING A VICTIM OR TO CHARGE THIS OTHER BOY DENG WITH ASSAULT OR
 12 NOTHING, IT WAS JUST TO PROSECUTE THE PLAINTIFF

13 OFFICER NICHOLAS GONZALEZ SUBMITS

14 A FALSE REPORT TO HIS SUPERVISOR

15 OFFICER GONZALEZ IN HIS REPORT TO HIS SUPERVISOR, STATED THAT ONE OF FACTORS, ONE OF HIS
 16 REASONS FOR PROBABLE CAUSE, WAS THAT THE PLAINTIFFS CALIFORNIA DRIVER'S LICENSE WERE
 17 SUSPENDED

18 INFORMATION FILED

19 ON DECEMBER 20, 2005, AN INFORMATION WAS FILED CHARGING PLAINTIFF WITH TWO COUNTS
 20 INVOLVING A SINGLE INCIDENT OF ALLEGEDLY DRIVING UNDER THE INFLUENCE OF ALCOHOL, COUNT ONE
 21 CHARGE A VIOLATION OF VEHICLE CODE 23152, SUBDIVISION (a), DRIVING UNDER THE INFLUENCE OF
 22 ALCOHOL, AND COUNT TWO CHARGE A VIOLATION OF SUBDIVISION (b), DRIVING UNDER THE INFLUENCE
 23 WITH A BLOOD ALCOHOL CONTENT OF .08 OR MORE

24 OFFICER NICHOLAS GONZALEZ MISHEARS THE JUDGE AT PRE-LIM ON THE BASIS
 25 OF PROBABLE CAUSE WITH A MATERIAL OMISSION, INTENDING TO ENHANCE THE
 26 CONTENTS OF THE AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE

27 OFFICER TESTIFIED THAT THE PLAINTIFFS CALIFORNIA DRIVER LICENSE'S WERE SUSPENDED, PLAINTIFFS
 28 CALIFORNIA DRIVER LICENSE #C5935148 WERE VALID, AND NOT SUSPENDED AT TIME OF ARREST,

1 -2 12-02-05, OFFICER HAD FABRICATED HIS REPORT AND A AFFIDAVIT, AND FABRICATED EVIDENCE.
2 TESTIMONY TO MISLEAD THE JUDGE.

3 OFFICER NICHOLAS GONZALEZ TESTIFVS WITH FABRICATED EVIDENCE IN TRIAL TO MISLEAD
4 THE JUDGE AND JURY;

5 DEFENSE ATTORNEY GREG TURNER OF PACIFIC LAW CENTER PROVIDES PROOF THAT THE PLAINTIFFS
6 CALIFORNIA LICENSE'S WERE NOT SUSPENDED, BUT VALID, AFTER OFFICER GONZALEZ'S TESTIMONY IN TRIAL
7 THAT THE LICENSE'S WERE SUSPENDED, OFFICER GONZALEZ HAD TESTIFIED THAT HE HAD CHECK THE
8 LICENSE'S IN HIS COMPUTER IN THE CAR, BEFORE THE ARREST, ON CROSS EXAMINATION HE ADMITTED
9 HE HAD ERROR IN SUBMITTING HIS REPORT, AND MISTAKEN IN HIS PREVIOUS TESTIMONY

10 FIRST TRIAL CONCLUSION

11 THE PLAINTIFF'S FIRST TRIAL CONCLUDED ON FEBRUARY 17, 2006. THE JURY ACQUITTED PLAINTIFF
12 OF COUNT TWO - DRIVING UNDER THE INFLUENCE WITH A BLOOD ALCOHOL MEASURE OF .08 OR ABOVE,
13 BUT WAS NOT ABLE TO REACH A VERDICT ON COUNT ONE - DRIVING UNDER THE INFLUENCE OF ALCOHOL,
14 A MISTRIAL WAS DECLARED AS TO THAT COUNT

15 OFFICER GONZALEZ'S ARREST, FIRST TRIAL

16 OFFICER GONZALEZ DID NOT PURSUE AN ARREST FOR DUI, UNTIL HE RAN A CHECK ON THE PLAINTIFF'S
17 CRIMINAL HISTORY, SAN DIEGO CITY POLICE OFFICERS HAS A CUSTOM, POLICY AND USAGE OF
18 CONDONING SYSTEMIC PRACTICE, THE CITY CONDONE'S THIS PRACTICE, OF RACIAL PROFILING
19 AFRICAN-AMERICANS WITH PRIOR CRIMINAL RECORDS WITH THE INTENT TO FALSELY ARREST AND
20 IMPRISON ARRESTEE WITHOUT JUST CAUSE, WHICH WILL BECOME MORE SELF-EXPLANATORY IN
21 SECOND/RETRIAL ALSO, OFFICER GONZALEZ'S WAS FULLY AWARE THAT THE PLAINTIFF WAS A VICTIM
22 OF A CRIME, ANY REASONABLE PERSON WOULD KNOW, IF TWO PEOPLE HAD A FIGHT, WHICH HE WAS
23 INFORMED, AND HAD NO REASON TO DISPUTE, PER BOTH PARTIES ACKNOWLEDGE, JUST PRIOR, AND THEN SOME
24 MILE AND A HALF AWAY, THE SAME TWO INDIVIDUALS, WHERE ONE CRASHES INTO THE OTHER AT
25 A STOP SIGN AT A HIGH SPEED OF 35 TO 40 MPH, WHILE THE OTHER IS OBEYING TRAFFIC LAWS, THERE
26 IS PROBABLE CAUSE THIS IS AN INTENTIONAL ACT OF PURSUING OR CHASING SOMEONE, AND NO INDICATION
27 OF AVOIDING A CRASH, AN ACT OF ASSAULT, BUT ALL OF THIS WAS IGNORED IN FAVOR OF
28 PURSUING THE INDIVIDUAL "PLAINTIFF" FOR AN ARREST FOR DUI, IN WHICH NO DRIVING ELEMENT

1 WAS OBSERVED, NO INDICATION OR REPORTS OF IMPAIRED DRIVING, AND WAS REAR-ENDED AND
 2 OBVIOUSLY NOT AT FAULT, AND THE COFFEE MUG WITH 20% FULL OF ALCOHOL, STANDING UPRIGHT
 3 ON THE FLOOR IN THE BACK SEATING AREA, WOULD NOT TILT OR SURVIVE A CRASH AT THAT HIGH
 4 SPEED, AND SPLASH 4 FEET IN THE AIR GO OVER THE FRONT PASSENGER SEAT AND BACK SUPPORT AND
 5 LAND ONLY ON THE SITTING AREA, NOT REASONABLE FOR AN OFFICER WHO IS TRAINED FOR DUI.
 6 ARREST, OR ASSAULT, THIS WAS NOT EVEN REASONABLE SUSPICION, AND DEFINITELY NOT PROBABLE CAUSE
 7 AS RETRIAL CLEARLY WILL SUPPORT ALSO.

8 OFFICER GONZALEZ IN THE RETRIAL
 9 DISTRICT ATTORNEY "DAN LINK" UNDER HIS POWER AS A COUNTY OFFICER, CONSTITUTION OF CALIFORNIA
 10 ART. XI, SEC 4, 1, APPOINTED ARRESTING OFFICER OF SAN DIEGO CITY POLICE, NICHOLAS
 11 GONZALEZ, THE PEOPLE'S PERSONAL INVESTIGATOR, THE D.A.'S ACTION WAS THAT OF A POLICY MAKER
 12 FOR THE COUNTY, AS A COUNTY OFFICER, NOT A PROSECUTORIAL ACT, OR A COMMENCEMENT OF
 13 PROSECUTION, THEREFORE NOT ACTING ON BEHALF OF THE STATE, OFFICER GONZALEZ ONLY HAD AUTHORITY
 14 TO INVESTIGATE IN SANDIEGO COUNTY, NOT THE WHOLE STATE, AND WAS PAID OUT OF COUNTY FUNDS.

15 THIS APPOINTMENT OF THE ARRESTING OFFICER AS PROSECUTIONS INVESTIGATOR FOR THE PEOPLE
 16 TAINTED THE OFFICER, AS HE ALSO TESTIFIED AGAINST THE PLAINTIFF, ANY REASONABLE PERSON ASSIGNED
 17 SUCH DUTIES WOULD INCINE AN OBLIGATION BIAS IN FAVOR OF PROSECUTION, THIS ACT ALSO
 18 ESTABLISH'S A CO-OPERATIVE COMMUNICATION, VIOLATES PROTECTION OF ACCUSED, 5th,

19 AFTER THE ACQUITTAL OF V.C. 23152 (b), THE SECOND TRIAL WAS
 20 BEGUN WITHOUT PROBABLE CAUSE FOR CHARGING CRIME, WAS ONLY
 21 PRODUCT OF MALICIOUS PROSECUTION

22 IN THE SECOND TRIAL/RETRIAL, THE PLAINTIFF WAS CHARGE WITH THE MISTRIAL COUNT ONE VEHICLE
 23 CODE 23152 (a), DRIVING UNDER THE INFLUENCE OF ALCOHOL, NOW THAT IT IS A CONCLUSIVE
 24 PROVEN FACT, THAT THE PLAINTIFF'S BLOOD ALCOHOL BY WEIGHT WAS NOT .08 OR ABOVE, THEREFORE
 25 THEIR NO PRESUMPTION FACTOR, AND THE PLAINTIFF WAS DRIVING LEGALLY, NOT OVER THE LIMIT,
 26 FOR A CONVICTION FOR 23152 (a), IT MUST BE PROVEN THE PLAINTIFF DROVE WHILE UNDER THE
 27 INFLUENCE, BUT THERE HAS NEVER BEEN ANY PROBABLE CAUSE TO SUPPORT THAT FACT, NO OBSERVED
 28 DRIVING ELEMENT, NO REPORTS OF IMPAIRED DRIVING, NO RUNNING RED LIGHTS, NOTHING, AND TO

1 BE REAR-ENDED BY ANOTHER VEHICLE IS NOT PROBABLE CAUSE THAT THE PLAINTIFF WAS UNDER
 2 THE INFLUENCE, THE PROBABLE CAUSE WOULD LIE ON THE PERSON AT FAULT, WHICH IN THIS CASE
 3 IS DENIED, AS ESTABLISHED, THERE WAS, AND ONLY BEEN A MERE SUSPICION FROM THE START, AND
 4 THAT SUSPICION HAS PROVEN TO BE INVALID BY THE JURY'S VERDICT ON V.C. 23152 (b), THUS
 5 THE ARREST WAS MADE WITHOUT PROBABLE CAUSE, A FALSE ARREST

6 IN THE FIRST TRIAL OFFICER GONZALEZ TESTIMONY, COULD NOT EXPLAIN HOW THE COFFEE
 7 MUG 20% FULL SITTING UPRIGHT ON THE FLOOR, BEHIND THE FRONT PASSENGER SEAT, AND NO SPILL
 8 IN THAT GENERAL AREA, BUT THEN A SPILL ON THE FRONT PASSENGER SEAT, SITTING AREA. IN THE
 9 RETRIAL/SECOND TRIAL IN COLLABORATION WITH PROSECUTION TO OBTAIN A CONVICTION AND CONFINEMENT
 10 OFFICER GONZALEZ NOW UNDER OATH STATED THE SPILL ON THE FRONT SEAT WAS A SPLASH-FORWARD
 11 FAN-SHAPED, TO SUPPORT SOMEHOW THE HAD SPLASH FROM THE BACK AREA FORWARD ON THE
 12 FRONT SEAT, ON CROSS-EXAMINATION HE ADMITTED THAT HE HAD NEVER DESCRIBED THE SPLASH
 13 MARKS IN THAT MANNER UNTIL THE SECOND TRIAL,

14 OFFICER GONZALEZ AGAIN CHANGE HIS STORY TO COLLABORATE WITH PROSECUTION, UNDER
 15 OATH, HE NOW STATED HE WAS NOT AWARE OF A FIGHT OR INDICATIONS OF A FIGHT ON PLAINTIFF'S FACE,
 16 BUT HE CONCEDED THAT PLAINTIFFS BOOKING PHOTOGRAPH DID SHOW SUCH BRUISES ON CROSS-
 17 EXAMINATION, NO REASONABLE PERSON OR OFFICER GONZALEZ, WOULD THINK HE HAD
 18 PROBABLE CAUSE TO SUSTAIN AN ARREST FOR D.U.I., AS HE STILL TESTIFIED IN THE RETRIAL
 19 WHEN HE TESTIFIED TO AN ARREST FOR D.U.I. WAS NOT REASONABLE AND HAD NO PROBABLE CAUSE
 20 AND HE KNEW THIS PRIOR TO THE RETRIAL, YES, THE PROSECUTION SHOULD HAVE VACATED THAT
 21 CHARGE, BUT HE STILL TESTIFIED TO JUSTIFY THE D.U.I. ARREST, REASONABLY HE HAD A BIAS
 22 OBLIGATION AS THE PROSECUTIONS INVESTIGATOR AND WAS TAINTED, THE COURSE OF ACTION WAS
 23 EXTENDED TO FABRICATING EVIDENCE, WILLFULLY ADMITTING TO ERRORS, CHANGING STATEMENTS UNDER
 24 OATH, FALSE STATEMENTS, NO PROBABLE CAUSE, RECKLESS REGARD TO THE PLAINTIFFS FEDERAL
 25 RIGHTS: ON APRIL 17, 2006, THE PLAINTIFF IN THE SECOND TRIAL WAS CONVICTED OF A
 26 VIOLATION OF VEHICLE CODE 23152 (a)-DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH NO FINDING
 27 ON ANY ENHANCEMENT, V.C. 23152 (a) ITSELF IS A MISDEMEANOR VIOLATION, ON JUNE 16,¹⁴
 28 THE PLAINTIFF RECEIVED A LETTER FROM THE CITY ATTORNEY'S OFFICE OF SAN DIEGO

1 - MICHAEL J. AGUIRRE, AFTER THE CONVICTION, NOW ACKNOWLEDGING THAT THE PLAINTIFF WAS A
 2 VICTIM OF A CRIME, SIN AND A HALF MONTHS LATER FROM THE DECEMBER 1, 2005 INCIDENT, THIS
 3 CONFIRMS THAT THE CITY CONDEMNS THE SYSTEMIC PRACTICE OF RACIAL PROFILING OF INDIVIDUALS WITH
 4 PRIOR CRIMINAL RECORDS THAT RESULTED IN MALICIOUS INTENT TO FALSELY ARREST AND UNLAWFULLY
 5 IMPRISON ARRESTEE WITHOUT JUST CAUSE, PER THE FACT THAT THE VICTIM OF A CRIME WAS INDEED
 6 THE PLAINTIFF, THIS FACT WAS IGNORED OR HIDDEN TO DISCLOSE TO A JURY OR JUDGE UNTIL AFTER
 7 A CONVICTION WAS MADE, PER IF DISCLOSE BEFORE A CONVICTION, IT WOULD HAVE A SIGNIFICANT
 8 IMPACT AND HURT THE PROSECUTION'S CASE, FURTHERMORE ON OCTOBER 30, 2006, AT SENTENCING OF
 9 SAID CASE # SCD195342 OF SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO,
 10 IN DEPARTMENT 6, THE COURT SENTENCED THE PLAINTIFF TO AN UNAUTHORIZED SENTENCE BY
 11 PENAL CODE, THE PRONOUNCEMENT OF JUDGMENT IS TO A VIOLATION OF VEHICLE CODE 23152 (A),
 12 THE COURT DID NOT PRONOUNCE ANY FINDING ON A ENHANCEMENT, AND UNDER CALIFORNIA LAW
 13 PUNISHMENT FOR A VIOLATION OF VC. 23152 WITHOUT A FINDING ON A ENHANCEMENT IS NOT
 14 AUTHORIZED FOR STATE PRISON CONFINEMENT. THE VIOLATION ITSELF IS A MISDEMEANOR. THE
 15 COURT SENTENCED THE PLAINTIFF TO 3 YEARS, UPPER TERM AND A 1 YEAR PRISON PRIOR, WHICH
 16 IS NOT AUTHORIZED AND THE PRISON PRIOR WAS IMPROPERLY ADDED, ALL OF OFFICER GONZALEZ
 17 ACTION'S AND COURT WERE OBJECTED TOO IN THE PROCEEDINGS

18 ON THIS COUNT 1, THE PLAINTIFFS AS IN ALL COUNTS IS ONLY SEEKING MONETARY
 19 DAMAGES AGAINST OFFICER NICHOLAS GONZALEZ INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, THE
 20 CITY OF SAN DIEGO, FOR FALSE ARREST THAT LED TO FALSE IMPRISONMENT, PROBABLE CAUSE FOR
 21 PURPOSES OF A MALICIOUS PROSECUTION, MALICIOUS PROSECUTION, "LIABILITY FOR INJURIES, GEN. CODE
 22 § 820, 822.2, "COMPENSATION - CIVIL CODE 3333", CIVIL CODE PERSONAL RIGHTS § 52.3,
 23 CODE CIV. P. § 1029, CIVIL CODE RELIEF § 3281, 3283, ALL WITHIN CCP § 340.3, PUNITIVE
 24 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS NOT WITHIN, PERSONAL RIGHTS § 52, (A), (C)
 25 CRUEL AND UNUSUAL PUNISHMENT FOR PLAINTIFF HAS DILIGENTLY SEEKED RELEASE FOR A CORRECTION OF AN
 26 UNAUTHORIZED SENTENCE, WHICH KEEPS GETTING DENIED PENDING APPEAL
 27
 28

Count 2: The following civil right has been violated: 6th AMEND. WITNESS IN HIS FAVOR, RIGHT TO COMPEL
(E.g., right to medical care, access to courts,
- 4th AMEND. - EQUAL PROTECTION OF LAW, 5th DUE PROCESS, 8th AMEND - CRUEL
due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,
etc.) - AND UNUSUAL PUNISHMENT

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 2.]

THE PLAINTIFF ASSERTS THAT IN CASE# SCD195342, SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE
COUNTY OF SAN DIEGO, 220 WEST BROADWAY, SAN DIEGO, CA. 92102, INVOLVING TWO TRIALS OF WHICH
THE FIRST TRIAL PERTAINS TO ON DECEMBER 20, 2005, AN INFORMATION WAS FILED CHARGING PLAINTIFF
WITH TWO COUNTS INVOLVING A SINGLE INCIDENT OF ALLEGEDLY DRIVING UNDER THE INFLUENCE OF ALCOHOL,
COUNT ONE WAS CHARGED A VIOLATION OF VEHICLE CODE SECTION 23152, SUBDIVISION (a) - DRIVING UNDER
THE INFLUENCE OF ALCOHOL, AND COUNT TWO ALSO SECTION 23152, SUBDIVISION (b) - DRIVING UNDER THE
INFLUENCE OF ALCOHOL WITH A BLOOD ALCOHOL CONTENT OF .08 OR ABOVE, THE PLAINTIFF PLEAD NOT
GUilty, AND IN FEBRUARY OF 2006, THE CASE WENT TO TRIAL, BY JURY, TRIAL CONCLUDED ON FEBRUARY
17, 2006, AS TO COUNT ONE, A MISTRIAL WAS DECLARED, AND AS TO COUNT TWO, THE JURY ACQUITTED
PLAINTIFF OF DRIVING WITH A BLOOD ALCOHOL LEVEL OF .08 OR ABOVE.

THE DISTRICT ATTORNEY DAN LINK, REFUSED ON THE MISTRIAL COUNT VEHICLE CODE 23152 (a),
UPON OBJECTION FOR DOUBLE JEOPARDY IT WAS GRANTED "A NEW TRIAL", ACTUALLY A RETRIAL. THE PLAINTIFF
ASSERTS THAT HONORABLE JUDGE ALBERT HARUTUNIAN III, SOLICIT TO, AND EMPOWER-ED DISCRIMINATION,
VIOLATED PLAINTIFF'S RIGHTS UNDER THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C.A. § 1981 EQUAL RIGHTS UNDER
THE LAW, IN PRE-TRIAL OF THE SECOND TRIAL ON OR ABOUT APRIL 6, 2006, DISTRICT ATTORNEY DAN LINK IN
OPEN COURT, IN REFERENCE THAT HE HAD CONTACT WITH A WHITE FEMALE JUROR FROM THE FIRST TRIAL, THAT
SHE INFORMED HIM THAT THE 2 "BLACK JURORS" "ONLY BLACK JURORS" IN THE FIRST TRIAL STATED THEY
WOULD NOT CONVICT THE "PLAINTIFF" THEN DEFENDANT OF ANYTHING, DAN LINK STOOD UP IN COURT AND
STATED TO JUDGE HARUTUNIAN III "HOW DO WE KNOW IF THESE TWO "BLACK JURORS" DID NOT INFLUENCE
THE REST OF THE JURY NOT TO CONVICT THE DEFENDANT, I IMMEDIATELY SAID TO DEFENSE ATTORNEY
GREG TURNER "THAT'S A RACIST STATEMENT AND TO OBJECT, WHICH HE DID, JUDGE HARUTUNIAN ISSUED A
OUT OF COURTROOM SIDE BAR, WHEN DEFENSE COUNSEL TURNER CAME BACK 5 MINUTES LATER, HE SAID
JUDGE HARUTUNIAN IS ALLOWING IT. IN THE SUBSEQUENTLY FOLLOWING JURY SELECTION, DISTRICT ATTORNEY
DAN LINK WAS ENSURING NO AFRICAN AMERICANS "BLACKS" TO BE ON THE JURY, WHENEVER A
BLACK WOULD GET TO THE PANEL, HE SYSTEMATICALLY USE HIS PEREMPTORY CHALLENGES TO ELIMINATE
THEM, 3 IN TOTAL, DEFENSE HAD SELECTED THE LAST BLACK POTENTIAL JUROR FOR THE PANEL,

1 DEFENSE COUNSEL GREG TURNER, SAID HE IS GOING TO REMOVE THE LAST BLACK POTENTIAL JUROR
 2 "REFERRING TO DAN LINK," I TOLD GREG, HE'S MAKING SURE NO BLACKS ARE ON THE JURY, THIS IS
 3 RACIST, DO SOMETHING, WHICH TURNER DID, AN OBJECTION, AGAIN JUDGE HARUTUNIAN, DAN LINK, AND
 4 GREG TURNER AND COURT REPORTER LEFT THE COURT ROOM, WHEN DEFENSE COUNSEL TURNER CAME
 5 BACK, AGAIN HE SAID JUDGE HARUTUNIAN IS GOING TO ALLOW IT, THEN FOR SURE DAN LINK
 6 CONTINUED HIS SYSTEMATIC EXCLUSION OF BLACKS "AFRICAN AMERICAN USED HIS PEREMPTORY
 7 CHALLENGE AND REMOVED THE LAST POTENTIAL AFRICAN AMERICAN, DUE TO DAN LINK'S STATEMENT
 8 ABOUT THE BLACK JURORS OF THE FIRST, IT CAN'T BE OVERLOOKED, HE WAS NOT AWARE OF HIS ACTIONS,
 9 AND JUDGE HARUTUNIAN III WAS ALSO AWARE, AND WAS FINAL POLICY MAKING AUTHORITY
 10 THE DISTRICT ATTORNEY DAN LINK WAS CLEARLY VIOLATING THE CIVIL RIGHTS ACT OF 1964,
 11 § 1981 EQUAL RIGHTS, THE JUDGE HAD THE POWER TO STOP IT, BUT NOT ONLY DID HE CONDONE IT, HE
 12 EMPOWER IT, THE PLAINTIFF ASSERTS THAT ABSOLUTE IMMUNITY IS NOT A GIVEN IN LIGHT OF
 13 DISCRIMINATION, AND THE PLAINTIFF ASSERTS TO THIS COURT, WHEN THIS COURT ASSEMBLES ALL THE
 14 ACTIONS FOLLOWING THIS ONE, IN THIS CLAIM BY JUDGE ALBERT HARUTUNIAN III IS DISCRIMINATING AGAINST
 15 THE PLAINTIFF

16 CLEAR ABSENCE OF JURISDICTION
 17 COURT PROCEEDINGS, CRIMINAL RECORDS ARE PUBLIC RECORDS, CAN BE OBTAIN BY THE PUBLIC, THE
 18 PLAINTIFF'S ACQUITTAL IN THE FIRST TRIAL OF SAME CASE *SCD195342, DIFFERENT COURT ROOM
 19 AND JUDGE, COURT RULES SET BY JUDGE HARUTUNIAN III OF THE RETRIAL ON OR ABOUT APRIL 10, 2006
 20 WAS THE JURY IS NOT TO KNOW THE PLAINTIFF/DEFENDANT WAS ACQUITTED OF VEHICLE CODE 23152 (b),
 21 THE JURY IS NOT TO KNOW THERE WAS A FIRST TRIAL, THE JURY IS NOT TO KNOW THIS IS A RETRIAL,
 22 AND ANY REFERENCE TO THE FIRST TRIAL IS TO BE REFERRED TOO AS A PRIOR HEARING, AND THE JUDGE
 23 REFUSE TO LET DEFENSE IN ANY MANNER, BRING IN THE ACQUITTAL OR KNOWLEDGE OF THE PREVIOUS TRIAL.
 24 THE JUDGE ACTED IN CLEAR ABSENCE OF JURISDICTION, AND WAS ANOTHER STEP IN DISCRIMINATING
 25 AGAINST THE PLAINTIFF, THE JUDGE HAS NO JURISDICTIONAL AUTHORITY TO DENIED ACCESS TO A PUBLIC
 26 RECORD AND THE RIGHT TO PRESENT IT AS EVIDENCE FAVORABLE TO THE DEFENDANT, A PUBLIC RECORD
 27 WHICH IS A MATERIAL WITNESS WITH A PROVEN FACT, THE JUDGE'S JURISDICTIONAL DEFECT WAS NOT ONLY
 28 A BRADY VIOLATION, BUT SHIFTED THE BURDEN OF PROOF TO NOW AS THE PETITIONER RATHER PLAINTIFF

1 HAS TO PROVE TO THE JURY THAT HE WAS NOT DRIVING UNDER THE INFLUENCE WITH A
 2 PRESUMPTION TO CONCLUDE IF THE PLAINTIFF'S BLOOD ALCOHOL LEVEL WAS .08 OR ABOVE, THAT
 3 HE WAS DRIVING UNDER THE INFLUENCE, WHICH WAS A ISSUE OF FACT, A FINAL JUDGMENT DECIDED
 4 IN THE FIRST TRIAL OF THE SAME PARTY AND SAME ACTION "COLLATERAL ESTOPPEL, PER THE JUDGE
 5 HARTONIAN III GAVE THIS JURY INSTRUCTION PER CAL CRIM INSTRUCTION 2110.

6 IF THE PEOPLE HAVE PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S
 7 BLOOD ALCOHOL LEVEL WAS .08 PERCENT OR MORE AT THE TIME OF THE CHEMICAL
 8 ANALYSIS, YOU MAY, BUT ARE NOT REQUIRED TO, CONCLUDE THAT THE DEFENDANT
 9 WAS UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE AT THE TIME OF THE
 10 ALLEGED OFFENSE

11 WHICH THE PLAINTIFF DID OBJECT TO ALL IN THIS CLAIM, PER ALSO UPON OBJECTION THE JUDGE
 12 ALLOWED FOR PROSECUTION TO PRESENT IN EVIDENCE THE FIELD SOBRIETY TEST AND THE BREATH INTOXILIZER
 13 TEST RESULTS OF .17, THESE ACTIONS WERE SIGNIFICANT AND POWERFUL TO THE JURY, PER THEIR IS
 14 A PRESUMPTION FACTOR IN VC 23152 (b), AND YOU DO NOT NEED TO PROVE IMPAIRED DRIVING, BUT IN
 15 VC 23152 (a) YOU DO NEED TO PROVE, WITH THAT INSTRUCTION AND THE ALLOWANCE OF THE
 16 BREATH TEST OF .17 ALONE, EVERY JURY WOULD CONVICT, BUT IF THE JURY HAD THE PROPER
 17 INSTRUCTION, THAT THE PLAINTIFF WAS DRIVING WITH A BLOOD ALCOHOL LEVEL OF .08 OR ABOVE,
 18 IN THAT NATURE, MORE THAN LIKELY A JURY WOULD NOT CONVICT, THE JUDGE'S ACTION WERE JUST
 19 ANOTHER STEP IN DISCRIMINATION, BUT HE WAS NOT DONE

20 ON APRIL 17, 2006, THE JURY CONVICTED THE PLAINTIFF ON A VIOLATION OF VEHICLE CODE
 21 23152 (a), DRIVING UNDER THE INFLUENCE OF ALCOHOL, THEN ON SENTENCING OCTOBER 30, 2006, DISTRICT
 22 ATTORNEY DAN LINK, STIPULATED HE HAD A STATEMENT OF AGGRAVATION SO THAT JUDGE HARTONIAN
 23 COULD SENTENCE THE PLAINTIFF/DEFENDANT TO AN UPPER TERM OF 3 YEARS, AND THE FACT THAT
 24 CALIFORNIA RULES OF COURT SAY THE STATEMENT HAS TO BE FILED 4 DAYS BEFORE SENTENCING
 25 AND THE FACT AS WILL BE SEEN ON ANOTHER COUNT OF THIS CLAIM, THE D.A. FABRICATED THE
 26 EVIDENCE, AND BESIDES THAT CAL RULES OF CT. 4.437 SAY, STIPULATE THE STATEMENT IS A
 27 DOCUMENT, AND DEFENSE REQUESTED A CONTINUANCE, ON THE STATEMENT FOR TIME TO GO OVER
 28 IT, THE JUDGE DENIED IT, BUT WHAT IS CRUCIAL IS THEIR WAS NEVER A DOCUMENT SUBMITTED,

1 THEREFORE, JUDGE HARUTUNIAN, DAN LINK AND DEFENSE COUNSEL ALL PRETENDED THAT THEIR
 2 WAS A ACTUAL DOCUMENT, THEIR IS NO STATEMENT OF AGGRAVATION DOCUMENT ON OR IN THE
 3 RECORD ON APPEAL, ALSO BACK ON JUNE 16 OR AROST WHEN THE PLAINTIFF WAS TRYING TO
 4 FIRE, DISCHARGE DEFENSE COUNSEL GREG TURNER, JUDGE HARUTUNIAN STATE HE IS NOT INCINED
 5 TO RELIEVE MR TURNER, UNTIL THIS BIFURCATION ISSUE IS RESOLVED, PLAINTIFF DID NOT KNOW
 6 WHAT IT WAS AT THE TIME, DID NOT KNOW WHAT BIFURCATION MEANT, ALL PARTIES WERE MISLEADING
 7 THE PLAINTIFF THAT DAY, PER THE PLAINTIFF DID NOT KNOW OR LEARN UNTIL AFTER SENTENCING WHAT
 8 HAPPEN THAT DAY, THE RECORDS STATE THIS WAS A TRIAL, THEIR IS ONE MORE ACTION FROM JUDGE
 9 HARUTUNIAN, BUT ALL OF THESE ACTS, CLEARLY ILLUSTRATES THE JUDGE IS NOT ACTING JUDICIAL, BUT
 10 IS USING HIS POWER TO DISCRIMINATE, SEE EXHIBIT "POJ1", THE JUDGE'S ACTIONS WERE NOT OF A
 11 JUDICIAL AUTHORITY OVER TWO OPPOSING PARTIES, IT WAS MORE OF A WITNESS FOR PROSECUTION WITH
 12 DELEGATING AUTHORITY OF RACISM, THIS IS MODERN DAY RACISM, THE STATEMENT OF AGGRAVATION HAD
 13 NO FORMAL PROOF, PROVIDED TO THE COURT, NO FACTS AT ALL AND WAS SUPPOSELY WAS THE
 14 SAME AS A PROBATION REPORT, WHICH PLAINTIFF HAS NEVER SEEN THE PROBATION REPORT, THERE ARE
 15 ISSUES WITH DEFENSE COUNSEL, TWO STATE BAR COMPLAINT WERE SUBMITTED, WHICH PLAINTIFF WILL ADDRESS
 16 AFTER INCARCERATION, THE D.A. PROVIDED NO PROOF ON THE NUMEROUS CONVICTIONS, HE STATED WAS
 17 IN HIS NON-EXISTENT DOCUMENT, ONLY RELYING A PROBATION REPORT, NOT MADE UNDER OATH AND
 18 NOT VERIFIED, BEFORE JUDGE HARUTUNIAN HE DENIED THE CONTINUANCE REQUEST BY DEFENSE FOR TIME TO
 19 GO OVER THIS STATEMENT OF AGGRAVATION, JUDGE HARUTUNIAN STATED TO DEFENSE I'LL GIVE YOU 5 MINUTES
 20 TO LOOK IT OVER AND TELL ME WHY I SHOULD GRANT A CONTINUANCE, BUT THE DOCUMENT DID NOT EXIST,
 21 WHEN THE JUDGE SENTENCED THE PLAINTIFF, HE PRONOUNCED JUDGMENT TO A VIOLATION OF VS. 23152 (9),
 22 HE MADE NO FINDING ON AN ENHANCEMENT, WHICH IS A MISDEMEANOR WITH NO ENHANCEMENTS, THEN
 23 HE SENTENCED THE PLAINTIFF TO 3 YEARS UPPER TERM AND A PRISON PRIOR UNDER 667.5 (b) FOR
 24 ONE YEAR, CONFINEMENT IN STATE PRISON, WHICH IS UNAUTHORIZED BY THE PENAL CODE / VEHICLE CODE
 25 23152 (9), ALSO ON THE RECORD ON APPEAL " THEIR IS NO PROOF OF PLAINTIFF ON PAROLE OR
 26 PRIOR CONFINEMENT, THIS IS NOT THE ACTS OF A COURT, TO BLATANTLY DISREGARD THE U.S. CONSTITUTION,
 27 FEDERAL RIGHTS, IT'S OWN RULES OF COURT, AND ETHICS, IT'S RACISM. YOU MUST OBSERVE, NOW LETS
 28 TAKE A LOOK AT THE FACTS IN SHORT FOR "MODERN DAY RACISM", THE PLAINTIFF

1 IS DOING 4 YEARS IN STATE PRISON, WHICH IS ALMOST COMPLETE FOR "BEING THE VICTIM OF A CRIME,
 2 GETTING REAR-ENDED AT A STOP SIGN, CONVICT^{ED} OF DRIVING UNDER THE INFLUENCE OF ALCOHOL,
 3 THAT NOBODY SAW HIM DRIVING, AND NO EVIDENCE OR REPORTS OF IMPAIRED DRIVING, TRAFFIC
 4 VIOLATIONS, ALL WITH DRIVING UNDER THE LEGAL LIMIT OF .08") THE FACTS ARE CLEAR, MODERN
 5 DAY RACISM. THE PLAINTIFF ASSERTS THAT HONORABLE JUDGE ALBERT HARDUNIAN III FOR
 6 ACTS OF DISCRIMINATION AGAINST THE CIVIL RIGHTS ACT 1964, 42 U.S.C. § 1981. EQUAL RIGHTS,
 7 AND A ACT IN CLEAR ABSENCE OF JURISDICTION IS NOT GRANTED ABSOLUTE IMMUNITY AND
 8 PLAINTIFF IS SEEKING MONETARY DAMAGES ONLY, FOR DISCRIMINATION, DUE PROCESS, CRUEL
 9 AND USU UNUSUAL PUNISHMENT, COMPENSATION UNDER § 3333, AND PUNITIVE, AND EMOTIONAL DISTRESS
 10 - IF THE STATE IS NOT LEGALLY LIABLE FOR ANY JUDGMENT AGAINST THE NAMED INDIVIDUALS, AND LOCAL
 11 GOVERNMENT, RATHER THAN THE STATE, WOULD BE RESPONSIBLE FOR ANY MONEY JUDGMENT RENDERED, AN ACTION
 12 AGAINST INDIVIDUAL DEFENDANTS WHO ARE EMPLOYEES IS NOT BARRED BY THE ELEVENTH AMENDMENT
 13 SEE HYLAND V. WINDER 117 F.3d 405 (9th Cir. 1997), 201W, 812 F.2d AT 1110-11

Count 3: The following civil right has been violated: 6th AMEND. RIGHT TO IMPARTIAL JURY, 5th AMEND. DUE
PROCESS, 14th AMEND. - EQUAL PROTECTION OF THE LAW, 5th AMEND. - DOUBLE JEOPARDY, 8th AMEND. - CRUEL AND UNUSUAL
due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,
etc.) Punishment

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 3.]

THE PLAINTIFF ASSEATS, THAT DISTRICT ATTORNEY DAN LINK, A COUNTY OFFICER FOR THE COUNTY OF
SAN DIEGO, IN CALIFORNIA, VIOLATED HIS CONSTITUTIONAL RIGHTS OF THE 6th AMEND RIGHT TO AN
IMPARTIAL JURY, AND FURTHER VIOLATIONS OF § 1981 EQUAL RIGHTS, CIVIL RIGHTS ACT OF 1964, IN THE
RETRIAL OF COUNT 1; VEHICLE CODE 23152 (a), - DRIVING UNDER THE INFLUENCE OF ALCOHOL, IN PRE-TRIAL
ON OR ABOUT APRIL 6, 2006, DAN LINK IN REFERENCE THAT HE HAD CONTACT WITH A WHITE FEMALE JUROR
FROM THE FIRST TRIAL -

"THE FIRST TRIAL OF WHICH THE PLAINTIFF WAS CHARGED WITH V.C. 23152 (a) - COUNT ONE,
AND COUNT TWO V.C. 23152 (b) - DRIVING WITH A BLOOD ALCOHOL CONTENT OF .08 OR ABOVE
THE FIRST TRIAL CONCLUDED ON FEBRUARY 17, 2006, THE JURY ACQUITTED PLAINTIFF OF
COUNT 2 VEHICLE CODE 23152 (b), AND MISTRIAL ON COUNT 1, V.C. 23152 (a)
- THE WHITE FEMALE JUROR TOLD HIM THAT THE TWO BLACK JURORS OF THE FIRST TRIAL "ONLY BLACK
JURORS" HAD STATED THEY WOULD NOT CONVICT THE DEFENDANT "PLAINTIFF" OF ANYTHING, DAN LINK
STOOD UP IN OPEN COURT AND STATED TO JUDGE HARUTUNIAN, HOW DO WE KNOW THESE 2 "BLACK JURORS"
DID NOT INFLUENCE THE REST OF THE JURY NOT TO CONVICT THE DEFENDANT, I IMMEDIATELY SAID TO DEFENSE
COUNSEL GREG TURNER, "THAT'S A RACIST STATEMENT, OBJECT, WHICH HE DID, THE COURT ISSUED A SIDEBAR OUT
OF THE COURT ROOM, WHEN DEFENSE COUNSEL CAME BACK 5 MINUTES LATER OR SO, HE STATED THE JUDGE IS ALLOWING
IT. IN THE SUBSEQUENT JURY SELECTION, DISTRICT ATTORNEY DAN LINK ENSURED NO BLACKS TO BE ON
THE JURY, EVERY POTENTIAL BLACK JUROR, THAT MADE IT TO THE PANEL HE SYSTEMATICALLY USE HIS
PEREMPTORY CHALLENGES TO REMOVE THEM, WHEN IT CAME DOWN TO ONLY ONE AFRICAN AMERICAN
"BLACK REMAINING FOR A POTENTIAL JUROR, DEFENSE HAD SELECTED THE LAST BLACK POTENTIAL JUROR FOR
THE PANEL, DEFENSE COUNSEL TURNER, SAID THE A.A. IS GOING TO REMOVE THAT LAST BLACK JUROR,
I TOLD GREG HE'S MAKING SURE NO BLACKS ARE ON THE JURY, THIS IS RACIST, DO SOMETHING, GREG
DID AN OBJECTION, AGAIN THE COURT ISSUED AN OUT OF COURT ROOM SIDEBAR, WHEN TURNER, CAME BACK,
HE SAID THE JUDGE IS GOING TO ALLOW IT, RIGHT AFTER DAN LINK CONTINUED HIS SYSTEMATIC EXCLUSION
OF BLACK JURORS, HE AGAIN USE HIS PEREMPTORY CHALLENGE AND REMOVED THE LAST POTENTIAL AFRICAN
AMERICAN "BLACK", PER DAN LINK'S EARLIER RACIST STATEMENT, AND THE DEFENSE OBJECTIONS,

1 IT CAN'T BE OVERLOOKED, THAT HE WAS NOT AWARE OF HIS ACTIONS, THIS WAS AN INTENTIONAL ACT,
 2 THIS WAS THE FIRST OF MANY, THE PLAINTIFF ASSERTS THIS COURT TO KEEP ASSEMBLING THE VIOLATIONS
 3 IT IS MODERN DAY RACISM, THIS ACTION BY THE DISTRICT ATTORNEY DAN LINK, UNDER CALIFORNIA
 4 PENAL CODE IS NOT AN ACT FOR THE COMMENCEMENT OF PROSECUTION FOR AN OFFENSE, WHICH IS
 5 ONLY FOUR INSTANCES, THEREFORE THIS IS NOT AN ACT ON BEHALF OF THE STATE AND IMMUNITY IS
 6 NOT GRANTED, THIS IS AN ACT AS A COUNTY OFFICER OF WHICH HE HAS POLICY MAKING AUTHORITY "FINAL"
 7 UNDER CALIFORNIA CONSTITUTION ART. XI SEC 4, ART II § 1 LOCAL GOVERNMENT, WHICH HE HAS
 8 THE POWER, A BATSON VIOLATION ALSO.

9 BRADY VIOLATION AND MISCONDUCT - EQUAL PROTECTION

10 IN THE FIRST TRIAL OF THE SAME ACTION, THE PLAINTIFF WAS ACQUITTED OF DRIVING UNDER THE INFLUENCE
 11 WITH A BLOOD ALCOHOL MEASURE OF .08 OR ABOVE, CASE # SCP196342, IN THE RETRIAL IN THE MONTH
 12 OF APRIL, 2006, DEFENSE COUNSEL, OF THE COURT RULES OF WHAT THE RETRIAL JURY WAS TO KNOW,
 13 THEY WERE NOT TO KNOW THIS WAS A RETRIAL, THAT THE PLAINTIFF WAS ACQUITTED OF VEHICLE CODE 23152
 14 (b), AND THAT THERE WAS A PREVIOUS / FIRST TRIAL, ANY REFERENCE WAS TO BE REFERRED AS A PRIOR
 15 HEARING, CONCEIVABLE DRIVEN BY PROSECUTION, BY MOTION, THIS IS MISLEADING THE JURY, AN ATTORNEY
 16 DUTY NOT ALLOWED, DAN LINK SUPPRESS EVIDENCE THAT WAS FAVORABLE TO PLAINTIFF, A BRADY
 17 VIOLATION AND VIOLATED DUE PROCESS, PLAINTIFFS ASSERTS HE HAD A RIGHT TO CLAIM FINALITY WITH
 18 RESPECT TO A FACT OR GROUP OF FACTS PREVIOUSLY DETERMINED IN HIS FAVOR UPON A PREVIOUS TRIAL
 19 AGAIN NOT A PROSECUTORIAL ACT, WAS ACTING AS A COUNTY OFFICER, THIS ACT WAS INTENTIONAL
 20 AND SHOWS THE EVIL INTENT PER NEXT, THE JURY INSTRUCTIONS WAS

21 IF THE PEOPLE HAVE PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S BLOOD

22 ALCOHOL LEVEL WAS .08 PERCENT OR MORE AT THE TIME OF THE CHEMICAL ANALYSIS,

23 YOU MAY, BUT ARE NOT REQUIRED TO, CONCLUDE THAT THE DEFENDANT WAS UNDER THE

24 INFLUENCE OF AN ALCOHOLIC BEVERAGE AT THE TIME OF THE ALLEGED OFFENSE

25 THIS TELLS THE JURY, IF PROSECUTION HAS ANY EVIDENCE THAT THE PLAINTIFF'S BLOOD ALCOHOL WAS .08

26 OR ABOVE, THAT, BY LAW THEY ARE TO PRESUME HE WAS DRIVING UNDER THE INFLUENCE, THEN DISTRICT ATTORNEY

27 PRESENTED EVIDENCE OF THE BREATH TEST THAT HAD A READING OF .17 UPON OBJECTION IT WAS

28 ALLOWED, AND LATER IN TRIAL, DAN LINK STATED TO THE JURY, THE DEFENDANT KNOWS HE WAS

1 DRIVING OVER THE LIMIT, WHAT THE JURY DIDN'T KNOW, AND COULD NOT BE TOLD, AND ESTABLISH BY
 2 PROSECUTION, DAN LINK AND JUDGE HARUTUNIAN WAS THAT THE PLAINTIFF WAS NOT DRIVING WITH A
 3 BLOOD ALCOHOL LEVEL OF .08 OR ABOVE, AND THEY COULD NOT PRESUME OR CONCLUDE HE WAS,
 4 PER HE WAS ACQUITTED OF THAT CHARGE IN THE FIRST TRIAL, THIS WAS EVIL, INTENTIONAL, WELL
 5 PLANNED AND WAS MEANT TO INFLECT INJURY, VICIOUS, WHEN JURY DELIBERATED IT WAS IN TOTAL TIME
 6 30 MINUTES OR SO, IT WOULD BE VERY HARD FOR ANY JURY NOT TO CONVICT IN THOSE CIRCUMSTANCES
 7 THIS IS DEFINITELY MALICIOUS PROSECUTION

8 COLLATERAL ESTOPPEL - DOUBLE JEOPARDY

9 IN THE FIRST TRIAL PLAINTIFF WAS ACQUITTED OF VEHICLE CODE 23153 (b) DRIVING UNDER THE
 10 INFLUENCE OF ALCOHOL WITH A BLOOD ALCOHOL CONTENT OF .08 OR ABOVE, THIS FACT WAS CONCLUSIVELY
 11 DETERMINED BY JURY ON FEBRUARY 17, 2006, THEREFORE DISTRICT ATTORNEY DAN LINK KNEW THAT THE
 12 ALCOHOL THE PLAINTIFF CONSUMED IN LARGE QUANTITIES WAS AFTER THE COLLISION, PER THIS WAS NOT AN
 13 ACCIDENT, FURTHERMORE THE FIELD SOBRIETY TEST AND THE BREATH INTOXILIZER TEST OF .17 IS DEEM
 14 IRRELEVANT, FOR NOW KNOWING BY LAW, THE PLAINTIFF WAS NOT DRIVING WITH A BLOOD ALCOHOL LEVEL
 15 OF .08 OR ABOVE, WHAT PURPOSE WOULD THE TEST OF .17 SERVE, NOTHING UNLESS THE JURY WAS INSTRUCTED
 16 THEY MAY ENTER A LESSER CHARGE OF 647, THAT IS PENAL CODE 647 - DRUNK IN PUBLIC, WHICH THEY WERE NOT,
 17 BUT DAN LINK AS THE FACTS ILLUSTRATE HAD DEVISED A ARTIFICE TO MISLEAD, DECEIVE, CLEVERLY, DEEP DOWN
 18 EVIL, MALICIOUS TO THE PLAINTIFF WITH NO REGARDS OF THE LAW, AND TOTAL DISRESPECT TO THE LAW AS IT IS
 19 WRITTEN OR CREATED,

20 HIS PLAN ARE FACTS, IN THE RETRIAL WAS FIRST NOT TO LET THE JURY KNOW THEIR WAS A FIRST TRIAL, AND
 21 FOR THEM NOT TO KNOW THE PLAINTIFF WAS ACQUITTED OF THE B.A.C. OF .08 OR ABOVE, AND THEN HE WAS GOING
 22 TO INTRODUCE THE FIELD SOBRIETY TEST AND BREATH INTOXILIZER TEST OF A READING OF .17, WHICH WOULD SAY
 23 THE PLAINTIFF WAS OVER THE LIMIT, PER HE KNEW THEIR WAS NO EVIDENCE TO PROVE IMPAIRED DRIVING,
 24 AND NOTHING IMPLICATED PROBABLE CAUSE, SO NOW HE WAS TO HAVE JURY INSTRUCTIONS TO TELL THE JURY
 25 IF HE HAS EVIDENCE THAT THE PLAINTIFF'S B.A.C. IS OVER .08, THEY ARE TO CONCLUDE HE WAS DRIVING OVER
 26 THE LEGAL LIMIT, NEXT THE TESTS WERE PRESENTED TO THE JURY, AND THEN HE SNUCK, SNEAK IN THE
 27 STATEMENT, THE DEFENDANT KNOWS HE WAS DRIVING OVER THE LIMIT, OF WHICH OF COURSE, OBJECTION, TO IT
 28 ALL WAS MADE, HE HAD GOTTEN RID OF ALL THE BLACK JURORS, WHICH HE FELT, AN OBSTACLE IN THE

1 FIRST TRIAL, NO MATTER HOW MANY CIVIL RIGHTS OR U.S. CONSTITUTIONAL RIGHTS WERE VIOLATED, NOTHING
 2 IN THE COURT STOP HIS ACTIONS, PER IT IS PURE "MODERN DAY RACISM" AND TO CAP IT OFF AS
 3 WILL BE ILLUSTRATED IN A FOLLOWING PARAGRAPH, DAN LINK FABRICATED EVIDENCE IN SENTENCING,
 4 TO AGGRAVATE THE SENTENCE TO A HARSHER PUNISHMENT, THAT WAS ALLOW ALSO.

5 THE DISTRICT ATTORNEY DAN LINK INTRODUCE THE PLAINTIFFS BLOOD ALCOHOL READING OF .17
 6 IN THE RETRIAL, AND HE STATED ON SEVERAL OCCASIONS THAT THE PLAINTIFF WAS DRIVING OVER THE
 7 LEGAL LIMIT, PER THE BASIC PRINCIPLE^{AL} OF RES JUDICATA AND COLLATERAL ESTOPPEL "THIS WAS
 8 AN ERROR AND DOUBLE JEOPARDY AS UNDER THE 5th AMEND, THERE IS NO DISPUTE THAT THE PARTIES
 9 IN THE FIRST TRIAL ARE THE SAME PARTIES INVOLVED IN THE SECOND TRIAL, AND THE JURY INSTRUCTION
 10 IS REVERSIBLE ERROR, BUT IN THIS ACTION, PLAINTIFF SEEKS ONLY MONETARY DAMAGES

11 APPOINTED ARRESTING OFFICER AS THE PROSECUTOR INVESTIGATOR
 12 DISTRICT ATTORNEY DAN LINK ALSO AS HIS POWERS AS A COUNTY OFFICER, APPOINTED IN COURT TO JUDGE
 13 HAROTUNIAN, AS HE STIMULATED TO THE COURT, THAT THE CITY OF SAN DIEGO POLICE OFFICER IS NOW THE
 14 PROSECUTOR'S PERSONAL INVESTIGATOR, THE APPOINTMENT WAS MADE UNDER THE POWERS OF THE DISTRICT ATTORNEY
 15 AS A FINAL POLICY MAKER, FOR THE SAN DIEGO COUNTY, PER THE CITY POLICE OFFICER WAS GIVEN AUTHORITY
 16 TO INVESTIGATE ONLY WITHIN THE COUNTY, AND THIS WAS FUNDED BY THE COUNTY, THE PLAINTIFF KNOWS THIS
 17 APPOINTMENT WAS MADE BEFOREHAND AND THROUGHOUT THE SECOND TRIAL, BUT NOT SORE ABOUT THE FIRST
 18 TRIAL, POWER AUTHORITY UNDER CALIFORNIA CONSTITUTION ART. XI, THIS ACT TAIN THE ARRESTING OFFICER,
 19 PER HE ALSO WAS TESTIFYING AGAINST THE PLAINTIFF, IN WHICH ANY REASONABLE PERSON ASSIGNED SUCH
 20 DUTIES WOULD BE INCUR AN OBLIGATION BIAS IN FAVOR OF PROSECUTION, PER HE DID OFFICER GONZALEZ
 21 WAS CAUGHT UNDER OATH TWICE FABRICATING EVIDENCE, SEE COUNT 1 IN THIS CLAIM, PLAINTIFF ASSERTS
 22 THIS A VIOLATION OF DUE PROCESS OF THE 5th OR 14th AMEND.

23 FABRICATING EVIDENCE

24 ON APRIL 17, 2006, IN THE RETRIAL, PLAINTIFF BY JURY WAS CONVICTED OF VEHICLE CODE 23152 (a) - DRIVING
 25 UNDER THE INFLUENCE OF ALCOHOL, AT SENTENCING ON OCTOBER 30, 2006, DISTRICT ATTORNEY DAN LINK
 26 PRESENTED, ACTUALLY HE STATED THAT HE HAD A STATEMENT OF AGGRAVATION FOR AGGRAVATING THE
 27 SENTENCE, DEFENSE COUNSEL MICHAEL SHUNK REQUEST A CONTINUANCE, PER THE STATEMENT WAS JUST
 28 INTRODUCED THAT DAY, GREG TURNER HAD BEEN DISCHARGED BY PLAINTIFF, THOUGH HE WAS THERE,

1 JUDGE HARUTYUNIAN IS NOT INCLINE TO GRANT THE CONTINUANCE, DAN LINK-PROSECUTION SAYS ITS THE
 2 SAME AS WHAT IS IN THE PROBATION REPORT, AND THEY SHOULD ALREADY KNOW; THE COURT GAVE A RECESS
 3 FOR DEFENSE COUNSEL, PER JUDGE STATED HE WOULD GIVE A 15 MIN BREAK, AND DEFENSE COULD COME UP
 4 WITH WHY HE SHOULD GRANT A CONTINUANCE, WHEN HE CAME BACK HE DENIED THE CONTINUANCE
 5 SEE EXHIBIT "A011"; DEFENSE COUNSEL MICHAEL SHUNK SHOW THE PLAINTIFF A SHEET OUT OF THE
 6 PROBATION REPORT OF WHICH I HAD NEVER SEEN THE PROBATION REPORT, I IMMEDIATELY OBJECTED TO WHAT
 7 I SAW 2 ARIZONA CONVICTIONS FOR DUI, A 1993 FELONY, AND A 1998 FELONY BOTH CONVICTIONS,
 8 DAN LINK STATED THE STATEMENT OF AGGRAVATION CONTAINS, HE NAMED THE 2 ARIZONA CONVICTIONS
 9 FOR DUI, A 1993 FELONY CONVICTION FOR DUI. AND A 1998 FELONY CONVICTION, AMONG OTHERS,
 10 AND AS TO MY OBJECTION OF THE 1993 FELONY CONVICTION, DAN LINK STATES ALL UNDER OATH, THAT
 11 IN 1993, I WAS IN SOME KIND OF PRISON CAMP, HE ALSO STATED THAT THE PLAINTIFF WAS UNFIT FOR
 12 SOCIETY AND SHOULD BE PUT AWAY ALONG TIME

13 THE PROBLEM IS, I DON'T HAVE ANY ARIZONA DUI CONVICTIONS OF 1985, NONE PERIOD, AND AS
 14 FOR THE 1993 DUI CONVICTION, IT IS NOT A FELONY CONVICTION, AND I WAS NOT IN A PRISON CAMP, AND
 15 THE 1998 CONVICTION WAS A MISDEMEANOR SEE ACCOMPANYING EXHIBITS'S

16 DISTRICT ATTORNEY DAN LINK NOT ONLY WAS FABRICATING EVIDENCE, ALSO THEIR IS NO
 17 STATEMENT OF AGGRAVATION EVER FILED, HE NEVER HAD ONE. DAN LINK MAKING UP 2 ARIZONA CONVICTIONS,
 18 KNOWING HE COULD NEVER PROVE IT, FOR IT NEVER HAPPEN, HE WAS MISLEADING THE COURT WITH NON-
 19 EXISTENT FACTS, ONLY DEFENDANT HIMSELF MADE OBJECTIONS, THE COURT OR D.A. DAN LINK TO PROVE
 20 OUTSTATE CONVICTION ARE ANY CONVICTION, IT WOULD SIMPLE TO PRODUCE A DOCUMENT, AND THEN
 21 DAN LINK STATED THEIR WAS A 1993 FELONY CONVICTION AND THE PLAINTIFF WAS IN SOME KIND
 22 OF PRISON CAMP, ANY REASONABLE PERSON, SPECIFICALLY AN ATTORNEY WOULD KNOW, CALIFORNIA
 23 PENAL CODE 1203 (C) WOULD KNOW THAT UNSUPERVISED PROBATION. COURT PROBATION IS A CONDITIONAL
 24 SENTENCE" AND CAN ONLY BE MADE IN MISDEMEANOR, NOT AUTHORIZED IN FELONY CONVICTIONS, AND FORMAL
 25 FELONY PROBATION WAS ERRONEOUS, PER FORMAL PROBATION IS MEASURED BY THE EXISTENCE OF SUPERVISED
 26 PROBATION, AND PENAL CODE 1203.49 "CONDITIONAL SENTENCE RELIEF, A CRIMINAL DEFENDANT TO BE IMPACHED
 27 WITH A FELONY PRIOR IS NOT APPLICABLE", WHICH IT WAS COMPLETED SUCCESSFULLY "COURT PROBATION, THAT IS."
 28 AND THEN TO ADD MORE FALSE INJURY, WHEN HE STATED PLAINTIFF HAS A 1998 FELONY

1 IN JULY OF 1998, THE PLAINTIFF TOOK A PLEA, ON DAY OF TRIAL, FOR POSSESSION OF A FIREARM, OF
 2 WHICH FROM THE 1993 CRIMINAL MIXTURES, THERE IS NO RESTRICTION ON WEAPONS, THE CONVICTION WAS A
 3 MISDEMEANOR, A SENTENCE OF 20 HRS COMMUNITY SERVICE, BOTH THE 1993, AND 1998 CASE WERE IN
 4 SANTA CLARA COUNTY, IN THAT SAME COUNTY, MAY 20, 2000, THE PLAINTIFF WAS ARRESTED FOR DWI
 5 CASE # CC074566, WHICH 2-14-01, THE PLAINTIFF WAS SENTENCE TO STATE PRISON, THIS IS THE
 6 PRISON PRIOR THAT WAS OBTAIN ILLEGALLY, PER RIGHT IN THE MIDDLE OF THAT CASE, COURT PROCEEDING OCCURRED
 7 THAT THE PLAINTIFF DID NOT KNOW HAPPENED, THE D.A. IN THAT COUNTY, TOOK THE 1998 CASE # 205489
 8 ON 11-22-00, AND MOVED TO THE COURT TO DESIGNATE IT AS A FELONY, THIS WAS ILLEGAL AND
 9 IMPROPER, THE COURT GRANTED THE MOVE, THEN ON THE DWI CASE # CC074566, THE PLAINTIFF WAS
 10 SENTENCED TO STATE PRISON FOR 16 MONTHS ON 2-14-01, THE DEFENSE COUNSEL MOTION TO VACATE
 11 THE JUDGMENT OF THE MOVE ON 11-22-2000 ON FEBRUARY 8, 2001, JUST PRIOR OF THAT SENTENCING,
 12 FOR THE DEFENDANT SHOULD HAVE THE OPPORTUNITY TO WITHDRAW HIS PLEA FROM JULY OF 1998, SO
 13 AFTER THE COURT SENTENCE ME ON 2-14-01 WITH A IMPROPER, INVALID POST-JUDGMENT FELONY
 14 DESIGNATION, ON 3-2-01, THE COURT ON THAT MOTION TO VACATE, VACATED THE POST-JUDGMENT
 15 ON 11-22-2000, AND THEN DISMISS CASE # 205489, THE PLAINTIFF WAS NOT AWARE OF THESE ACTIONS,
 16 WHICH HE JUST RECENTLY DISCOVERED, AND WILL BE ATTACKING THE 2000-2001 CASE PER IT WAS
 17 OBTAINED ILLEGALLY, THATS ANOTHER CONFIRMATION TO "MODERN DAY RACISM", BUT AS IN THE
 18 CASE DAN LINK WAS AGAIN FABRICATING EVIDENCE PER, THE CASE WAS DISMISS, AND PLAINTIFF WAS NOT
 19 CONVICTED OF A 1998 FELONY, NO PROOF WAS PROVIDED TO THE COURT, BUT WAS ACCEPTED BY THE COURT
 20 THEREFORE TO MAKE UP NON-EXISTENT CONVICTION, FABRICATE A MISDEMEANOR AS A FELONY,
 21 FABRICATE A DISMISS CASE AS A FELONY CONVICTION, THAT WAS NEVER A FELONY VALID, IT WAS ONLY A VALID
 22 MISDEMEANOR BEFORE DISMISSAL, AND UNDER CAL RULE OF CT. 4.437, A STATEMENT OF AGGRAVATION
 23 NOT ONLY BE FILED 4 DAYS BEFORE SENTENCING, BUT IT IS A DOCUMENT, BUT NO DOCUMENT IS ON RECORD
 24 ON APPEAL, THEREFORE ONE WAS NOT PRODUCED, THEY PRETENDED TO HAVE ONE THAT DAY AT SENTENCING
 25 ALL PARTIES, AND HIS STATEMENT THAT THE PLAINTIFF IS UNFIT FOR SOCIETY, AND SHOULD BE PUT AWAY
 26 A LONG TIME, ON TOP OF THE REST, THIS CONDUCT IS OUTRAGEOUS AND IS OFFENSIVE TO HUMAN DIGNITY
 27 IS PURE MALICIOUS, INTENTIONAL, DELIBERATE AND MUCH MORE THAN JUST FRAUD, VICIOUS, ABUSED, IS INTENTIONAL
 28 INFLECTION OF EMOTIONAL DISTRESS, THE PLAINTIFF HAS BEEN IN A STATE OF DISTRAUGHT, AND HIS FIGHTING

1 FOR HIS LIFE, FOR HE CAN'T BELIEVE WHAT HAS BEEN HAPPENING, DISTRICT ATTORNEY DAN LINK IS RESPONSIBLE
 2 FOR THE PLAINTIFF'S STATE PRISON CONFINEMENT ALSO, WHICH ON OCTOBER 30, 2006, THE COURT
 3 SENTENCE THE PLAINTIFF TO 3 YEAR IN STATE PRISON + 1 YEAR FOR PRISON PRIOR UNDER 667.5 (6), BUT
 4 THE COURT PRONOUNCED JUDGMENT OF A VIOLATION OF VEHICLE CODE 23152 (a) AND PRONOUNCED
 5 NO ENHANCEMENT FOR THE VIOLATION, THEREFORE A MISDEMEANOR CONVICTION, AND UNAUTHORIZED SENTENCE
 6 BY PENAL CODE/VEHICLE CODE, BUT THE PLAINTIFF HAS OINGENTLY BY PETITION AND MOTION FOR THE COURT TO
 7 CORRECT AN UNAUTHORIZED SENTENCE, WHICH PLAINTIFF SHOULD BE IMMEDIATELY RELEASED FROM PRISON
 8 CUSTODY, SENTENCING COURT NEEDS RESPONDING, DENIED PENDING APPEAL AND THAT THE APPEAL IS THE
 9 SPEEDY AND ADEQUATE REMEDY, I HAVE PETITION THE APPELLATE COURT ALSO AND IS AWAITING "COURT OF APPEALS
 10 FOURTH APPELLATE DISTRICT, DIVISION ONE *D049923.

11 THE PLAINTIFF ASSERTS THE DISTRICT ATTORNEY DAN LINK INDIVIDUAL, AND WITH HIS FINAL
 12 POLICY MAKING ACTIONS IN HIS OFFICIAL CAPACITY AS A COUNTY OFFICER, THE COUNTY OF SAN DIEGO
 13 IS BEING SUED AND PLAINTIFF IS SEEKING MONETARY DAMAGES FOR MALICIOUS PROSECUTION, FALSE
 14 IMPRISONMENT, CRUEL AND UNUSUAL PUNISHMENT, PROBABLE CAUSE FOR PURPOSES OF MALICIOUS PROSECUTION,
 15 FABRICATING EVIDENCE, ARABY VIOLATION, DEFAMATION, INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
 16 LIABILITY FOR INJURIES, GOVERNMENT CODE § 820, 822.2, "COMPENSATION - CIVIL CODE § 3333, CIVIL CODE
 17 PERSONAL RIGHTS § 52.3 CCP § 1029, CIVIL CODE RELIEF § 3281, 3283, PERSON RIGHTS § 52(A), (C)
 18 CIVIL RIGHTS ACT OF 1964, 42 U.S.C.A. § 1981 EQUAL RIGHTS. DISTRICT ATTORNEY DAN LINK WAS
 19 ACTING AS A INVESTIGATOR, NOT A PROSECUTORIAL ACT, WHEN PRESENTING EVIDENCE, HE HAD NO PROOF OCCURRED
 20 WHEN HE CONCLUDED A PRISON CAMP, HE CONCLUDED MISDEMEANOR, AND DISMIST CASE'S TO BE A
 21 FRAUD, HIS INVESTIGATION AND ASSUMPTION WERE WRONG)

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? ☐ Yes ☒ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

(b) Name of the court and docket number: _____

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] _____

(d) Issues raised: _____

(e) Approximate date case was filed: _____

(f) Approximate date of disposition: _____

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☐ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s): _____

2. Damages in the sum of \$ 2,300,000.00.

3. Punitive damages in the sum of \$ 750,000.00.

4. Other: LOSS OF WORK BACK/FRONT 250,000.00

F. Demand for Jury Trial

Plaintiff demands a trial by ☒ Jury ☐ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

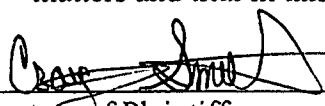
Choose only one of the following:

☐ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☒ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

OCTOBER 20, 2007
Date


Signature of Plaintiff

1 CRAIG SMITH
2 5-21-118
3 P.O. BOX 799005
4 SAN DIEGO, CA 92179
5 709268

6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 CRAIG SMITH

11 PLAINTIFF

12 v.

13 DAN LINK

14 ALBERT HARUTUNIAN III

15 NICHOLAS GONZALEZ

16 COUNTY OF SAN DIEGO

17 CITY OF SAN DIEGO

18 DEFENDANT(S)

COMPLAINT UNDER THE

CIVIL RIGHTS ACT

42 U.S.C. § 1983

SEEKING MONETARY DAMAGES ONLY

ARGUMENTS

19
20 ARGUMENT

21 I

22 THE PLAINTIFF FINDS CRUCIAL ELEMENTS OF THE UNLAWFULNESS OF HIS
23 CONFINEMENT, DESPITE THE VIOLATIONS OF THE U.S. CONSTITUTION IN PRESENT CASE BROUGHT
24 FORWARD, CASE # SC0195342 OF SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO, THE
25 BLATANTLY IN YOUR FACE VIOLATIONS, AND THE CO-OPERATIVE POSITION, DEFENSE COUNSEL TOOK WITH
26 PROSECUTION, THE DEFENSE COUNSEL "PACIFIC LAW CENTER" ACTIONS WERE SO SHOCKING, THE
27 PLAINTIFF DID EXTENSIVE RESEARCH ON HIS OWN, AND MADE A STUMBLING DISCOVERY, THAT HIS
28 PRIOR CONVICTION OF 2001, CASE # CC07456 OUT OF SANTA CLARA COUNTY WAS OBTAINED

1 ILLEGALLY, OF WHICH HAS CREATED A DOMINO EFFECT, THE PLAINTIFF IN THAT CASE WAS
 2 SENTENCED AND SERVED 16 MONTHS IN STATE PRISON, IN THAT CASE, THE PLAINTIFF WAS CONVICTED
 3 AND SENTENCE UNDER A VIOLATION OF VEHICLE CODE 2315.2 WITH A FELONY ENHANCEMENT
 4 UNDER VEHICLE CODE 23550.5, WHICH STIPULATES A DEFENDANT TO HAVE HAD A FELONY
 5 CONVICTION OF DRIVING UNDER THE INFLUENCE WITHIN 10 YEARS, THE PRIOR UTILIZED IN THAT
 6 CASE WAS A 1993 DUI CONVICTION, CASE #163775 OUT OF THE SAME COUNTY, "SEE EXHIBIT
 7 IN THAT 1993 CASE IMPASSE WAS DECLARED AND A "CONDITIONAL SENTENCE" WAS IMPOSED UNDER
 8 CAL. PENAL CODE 1203 (a), NO PRE-SENTENCE INVESTIGATIVE REPORT REFERRAL TO PROBATION
 9 DEPT. OR OFFICER WAS DONE, AND THE PROBATION WAS UNSUPERVISED, NO PROBATION OFFICER,
 10 ONLY COURT PROBATION, WHICH IS A "CONDITIONAL SENTENCE", AND NO RESTRICTIONS ON A DANGEROUS
 11 WEAPON, ALL OF WHICH A REASONABLE PROSECUTOR WOULD HAVE KNOWN IT WAS A MISDEMEANOR
 12 CONVICTION, EVEN THOUGH THE CRIMINAL MINUTES ERRONEOUSLY ILLUSTRATED THE PLAINTIFF WAS
 13 ON FORMAL FELONY PROBATION (SEE PEOPLE V. LOCKETT, 195 CAL. RPT. 119 (CAL. APP. 1 DIST 1983))
 14 EVEN SO, THE COURT PROBATION OF 3 YEARS WAS SUCCESSFULLY COMPLETED, AND UNDER RELIEF
 15 FOR A CONDITIONAL SENTENCE CAL. PENAL CODE 1203.49 APPLIES, WHICH CLEARLY STATES
 16 TO IMPEACH A CRIMINAL DEFENDANT WITH A PRIOR FELONY CONVICTION IS "NOT APPLICABLE."
 17 AS OF 2002, FORMAL PROBATION IS MEASURED BY THE EXISTENCE OF SUPERVISED PROBATION.

18 THEREFORE IN CASE # CC074566 THE MAXIMUM PUNISHMENT COULD ONLY HAVE BEEN
 19 OF A MISDEMEANOR, IN TURN THE PRESENT SAN DIEGO COUNTY CASE # SC0195342, THE MAXIMUM
 20 ALLEGATION COULD ONLY BE THAT OF A MISDEMEANOR, PROSECUTION MISREAD THE COURT

21 WHEREFORE THE PLAINTIFFS CRIMINAL HISTORY SINCE 2000 AND THE SUBSTANTIAL
 22 EFFECT ON HIS LIFE HAS BEEN THE CIRCUMSTANCE OF VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS OF
 23 THE UNITED STATES, OF CONSEQUENCES, AND APPARENT THE VICTIM OF RACIAL BIAS FOR A LONG TIME,

24 THE PLAINTIFF PAID PACIFIC LAW CENTER IN PRESENT CASE TO LOOK INTO THE PRIOR
 25 CONVICTION, WHICH THEY DID NOTHING, HE ALSO INFORMED THE COURT AT SENTENCING, OCTOBER 30, 2006
 26 BUT HIS THEORY WAS WRONG, WHICH THE COURT REFUSED TO ENTERTAIN

27 THE PLAINTIFF WAS NOT ABLE TO CONFIRM THE 1993 CONVICTION UNTIL RECENTLY, AS OF
 28 THE PLAINTIFF INQUIRED TO CURRENT APPOINTED APPELLATE ATTORNEY CHRISTOPHER BLAKE

1 COULD HE ALSO ADDRESS THE PRIOR CONVICTION, FOR WHICH HE REPLIED IT IS OUT OF HIS SCOPE
 2 EVEN THOUGH, THE PRESENT CASE IS A CONSEQUENCE OF THE PRIOR CONVICTION, SEE ALSO
 3 "TOWNSEND V. BORKE, 68 S. CT. 1252 (1948), PREVIOUS CONVICTION HAD BEEN UNCONSTITUTIONALLY
 4 OBTAINED, MIS INFORMATION, MATERIALLY UNTRUE", THE PLAINTIFF HAS NO REMEDY, DUE IN MOST
 5 PART FOR TIME RESTRAINTS, COMMENCE THIS ACTION FOR MONETARY DAMAGES AND
 6 THEREAFTER COLLATERALLY ATTACK THE VOID JUDGMENT ON THE PRIOR CONVICTION

7 THEREFORE IN TRUE NATURE WITHOUT THE VIOLATIONS OF THE CONSTITUTION IN PRESENT
 8 CASE, THE CONFINEMENT OF THE PLAINTIFF IS STILL UNLAWFUL, NOTWITHSTANDING THE
 9 CONVICTION AND PRONOUNCEMENT OF JUDGMENT IN PRESENT CASE * SCD195342 WAS/IS
 10 ONLY FOR A VIOLATION OF VEHICLE CODE 23152 (a) WITH NO ENHANCEMENT PRONOUNCED,
 11 UNDER CALIFORNIA LAW AN ENHANCEMENT TO A VIOLATION MUST BE PRONOUNCED, ALSO UNDER
 12 CALIFORNIA LAW CONFINEMENT IN STATE PRISON FOR A VIOLATION OF VEHICLE CODE 23152 (a)
 13 IS NOT AUTHORIZED, DESPITE THE PLAINTIFFS DILIGENT EFFORTS TO THE COURT TO CORRECT
 14 AN UNAUTHORIZED SENTENCE, THE PLAINTIFF WITHOUT A DOUBT IS CONFINED UNLAWFULLY.

15 THE PLAINTIFF'S APPEAL OF PRESENT CASE HAS FILED SINCE FEBRUARY 2nd, 2007, AND
 16 THE PLAINTIFF CONTENDS THAT THE § 1983 ACTION FOR MONETARY DAMAGES ONLY, SHOULD
 17 ACCRUE PRIOR TO THE OVERTURNING OF THE CONVICTION OR SENTENCE PER THE CONFINEMENT
 18 IS ALREADY UNLAWFUL, "SEE "ROWE V. CITY OF FORT LAUDERDALE (S.D. FLA 1998)

19 UNDER CALIFORNIA CIVIL CODE 340.3 A CIVIL ACTION FOR DAMAGES MUST COMMENCED
 20 WITHIN A YEAR OF PRONOUNCEMENT OF JUDGMENT, WHICH WILL EXPIRE 10-30-07,

22 ARGUMENT

23 II

24 THE PLAINTIFF SUBMITTED VIA MAIL A HABEAS CORPUS PETITION TO TRIA COURT, SUPERIOR
 25 COURT, COUNTY OF SAN DIEGO ON THE ILLEGAL SENTENCE, THE COURT FILED THE RESPONSE ON
 26 JUNE 5, 2007, DENIED PENDING APPEAL STATEING, THE COURT STIPULATED IT LACKED JURISDICTION
 27 OF THE CASE DUE TO THE APPELLATE COURT HAS JURISDICTION, "COURT OF APPEALS, FOURTH
 28 APPELLATE DISTRICT, DIVISION ONE," ^{DOH4943} BUT AS IN PEOPLE V. MASSENGALE 84 CAL. APTA 237 (1970),

1 WHEN A COURT PRONOUNCES A SENTENCE WHICH IS UNAUTHORIZED BY THE PENAL CODE THAT
 2 SENTENCE MUST BE VACATED AND A PROPER SENTENCE IMPOSED, WHENEVER THE MISTAKE IS
 3 APPROPRIATELY BROUGHT TO COURT'S ATTENTION, AND IF A TRIAL COURT REFUSES TO CORRECT AN
 4 ILLEGAL SENTENCE, RELIEF MAY BE OBTAIN IN REVIEWING COURT. THEREFORE PLAINTIFF
 5 SUBMITTED VIA MAIL A "MOTION TO VACATE VOID PORTION OF THE JUDGMENT AND TO IMPOSE AN
 6 AUTHORIZED SENTENCE" TO TRIAL COURT ON JUNE 19, 2007, AFTER PLAINTIFF ON 9-11-2007
 7 SUBMITTED A REQUEST FOR RULING, THE PLAINTIFF RECEIVED A ORDER FILED 9-20-07, THAT A
 8 HARRIS CORPUS PETITION, NOT A MOTION WAS FILED 7-24-07 AND IS DENIED, DUE TO APPEAL IS STILL
 9 PENDING AND THE APPEAL MAY BE THE SPEEDY AND ADEQUATE REMEDY, PER IN THE MOTION THE
 10 PLAINTIFF ELABORATED THAT THE APPEAL WAS NOT THE SPEEDY REMEDY, STIPULATING TO THE
 11 COURT TO DEFERMENT THE CORRECTION UNTIL THE APPEAL IS DECIDED, WOULD ONLY HEIGHTEN
 12 A KNOWN FACT AND WOULD BE CRUEL AND UNUSUAL PUNISHMENT

13 THE PLAINTIFF HAS SUBMITTED A PETITION VIA MAIL TO REVIEWING COURT 10-4-07
 14 AND IS AWAITING. THE PLAINTIFF FINDS THESE ACTIONS INTENTIONAL, PER IN FEBRUARY OF
 15 2007 UPON CONTACT WITH THE APPELLATE DEFENDER'S OFFICE, THE PARALEGAL "VEN" I BELIEVE INFORMED
 16 ME THAT AN APPEAL TAKES A YEAR OR MORE, AND VERY RARE TO BE UNDER A YEAR, AND APPOINTED
 17 APPELLATE ATTORNEY CHRISTOPHER BLAKE IN AUGUST, 07, ME THAT THE DISTRICT ATTORNEY OFFICE APPELLATE
 18 DIVISION HAS A CUSTOM OF DELAYING AN APPEAL DECISION WELL BEYOND A YEAR, AND IN MOST
 19 CASE'S AFTER THE PRISONER HAS SERVED ALL OF THE SENTENCE AND RELEASED, AND MOST RECENTLY
 20 CHRISTOPHER BLAKE ON OCTOBER 12, 2007 APPROX. 2:30pm, TOLD ME HE DOESN'T EXPECT A DECISION
 21 ON MY APPEAL UNTIL AFTER APRIL, 2008, IN WHICH I WOULD BE RELEASED IN APRIL, APRIL 26, 2008

22 I FIND THE CUSTOM TO BE TRUE, BUT CONTRIBUTE IT TO BE CO-OPERATIVE WITHIN THE COUNTY, PER
 23 MR. BLAKE HAS BEEN BLATANT WITH HIS MISLEADING, I SUBMITTED A MARSHEN MOTION TO RELIEVE
 24 CHRISTOPHER BLAKE, IT WAS DENIED. THE FOLLOWING ILLUSTRATES FACT OF THE DELAY TACTIC:

- 25 • PRONOUNCEMENT OF JUDGMENT IN CASE *SCD195342 WAS 10-30-06
- 26 • CALIFORNIA CIVIL CODE 340.3, CIVIL ACTION FOR DAMAGES MUST COMMENCE WITHIN ONE
- 27 YEAR OF THE PRONOUNCEMENT OF JUDGMENT
- 28 • PLAINTIFF FILED NOTICE OF APPEAL DECEMBER 6, 2006, WITH MOTION FOR ->

1 COURT APPOINTED ATTORNEY UPON APPEAL

2 • THE APPEAL WAS FILED FEBRUARY 2, 2007, WITH OPENING BRIEFS DUE MARCH 14, 2007

3 • PLAINTIFF MOTION FOR COURT OF APPEALS TO ORDER TRIAL COUNSEL TO TURN OVER ALL FILES, MATERIAL

4 FOR PLAINTIFF HAS NO ATTORNEY, ALSO REQUESTED EXTENSION FOR OPENING BRIEFS ON MARCH

5 4, 2007

6 • THE COURT OF APPEALS DENIED THE EXTENSION, AND APPARENTLY PUSHED FOR COURT APPOINTED

7 ATTORNEY, PER CHRISTOPHER BLAKE WAS APPOINTED VIA APPELLATE DEFENDER'S OFFICE MARCH 9, 07

8 • CHRISTOPHER BLAKE FILED OPENING BRIEFS ON OR ABOUT JUNE 28, 07, THROUGH-OUT PLAINTIFF WAS

9 INSISTING NO UNNECESSARY DELAYS, THREE EXTENSIONS WERE FILED

10 • RESPONDENT'S BRIEF WERE DUE AUGUST 1, 07, AFTER 2 EXTENSIONS FILED, THEIR BRIEF WAS DUE

11 OCTOBER 1, 07,

12 • CONTACTED BLAKE, OCTOBER 12, 07, AS OF THAT DAY RESPONDENT HAD NOT FILED THEIR BRIEFS OR

13 REQUESTED AN EXTENSION, AND COURT OF APPEALS HAD NOTIFIED THEM, FOR A GRACE PERIOD OF 30

14 DAYS, CHRISTOPHER BLAKE IS AGAIN INSISTING OR ATTEMPTING TO GET THE PLAINTIFF TO EXPECT

15 THE DECISION TO BE AFTER MY EXPECTED RELEASE DATE, WHICH IS APRIL 26, 08, BUT I HAVE RESEARCH THE

16 PROCEDURES AND AFTER BRIEFS ARE FILED, THE ONLY PROCEEDINGS ARE EITHER REPLY BRIEFS, ORAL ARGUMENTS,

17 IT'S NOT REASONABLE, UNLESS THERE IS MORE DELAY TACTICS, PER, BLAKE THIS IS CUSTOMARY, I BELIEVE IT

18 TRUE, AND WOULD LOOK FOR MORE SOLID PROOF, BUT, FIND THIS ACTION MUST COMMENCE AND IS BARRED WITH

19 TIME RESTRAINTS

20 HECK RULE IMPOSSIBLE

21 WITH § 1983 ACTION GOVERNED BY STATE STATUTE, AND CAL. CIV CODE 340.3 CIVIL ACTIONS FOR

22 DAMAGES MUST COMMENCED WITHIN A YEAR OF ANNOUNCEMENT OF JUDGMENT, WHICH WILL EXPIRE 10-30-07

23 AND WITH THE DELAY CUSTOM, REGARDLESS PLAINTIFF WILL NOT HAVE A FORUM FOR DAMAGES AND WILL NOT

24 BE ABLE TO REDRESS IN STATE PROCEEDINGS, SEE "SIMPSON V. ROWAN, 73 F.3d 134 (7th CIR 1995)"

25 THE PLAINTIFF CONTENDS THE HECK RULE IS NOT PRECEDENT AND HAS NO EFFECT, AS OF THE

26 STAGE OF THE APPEAL, PER SE A FAVORABLE TERMINATION OF THE APPEAL, THE PLAINTIFF STILL WOULD NOT

27 BE ABLE TO SEEK MONETARY DAMAGES FOR IT WOULD BE TIME BARRED, AND THE RIGHT TO RELIEF WILL BE NON-

28 EXISTENT, AND THE PLAINTIFF IS NOT CHALLENGING THE CONVICTION OR SENTENCE IN THIS ACTION, PER THAT

1 PROCESS IS ALREADY IN STATE COURT, AND PER CALIFORNIA LAW, THE CONFINEMENT IN STATE PRISON IS
 2 NOT AUTHORIZED BY PENAL CODE /VEHICLE CODE 23152 (a), THEREFORE THE CONFINEMENT IS ALREADY
 3 UNLAWFUL - AND AS IN WILLIAMS V. HEPTING, 814 F.2d 138, 144-45 (3d Cir.) (DISTRICT COURT MUST STAY
 4 RATHER THAN DISMISS CLAIMS WHEN MONETARY RELIEF IS NOT AVAILABLE FROM ONGOING STATE PROCEEDING,
 5 488 U.S. 861, 109 S. CT 185, 102 L. ED. 2d 107 (1988))

6 ALSO SEE SIMSON V. ROWAN, SUPRA - IN DEAKINS, THE SUPREME COURT DETERMINED THAT WHEN
 7 "YOUNGER" ABSTENTION IS REQUIRED, "THE DISTRICT COURT HAS NO DISCRETION TO DISMISS RATHER THAN
 8 TO STAY CLAIMS FOR MONETARY RELIEF THAT CANNOT BE REDRESSED IN THE STATE PROCEEDING

9 ALSO THE PLAINTIFF FORESEES THAT BY THE TIME THIS COURT CONSIDERS ON THIS CLAIM, THAT
 10 THE APPEALS COURT DECISION WOULD BE DECIDED, OR THE PLAINTIFF COULD BE RELEASE FROM PRISON
 11 CUSTODY, AND IF PLAINTIFF IS RELEASE FROM PRISON CUSTODY, THE PLAINTIFF SHOULD BE ALLOWED
 12 TO PROCEED ON THE §1983 ACTION FOR I ONLY SEEK MONETARY DAMAGES, AND NO FORUM WOULD
 13 BE AVAILABLE, SEE "DIBLE V. SCHOLL 410 F.SUPP. 2d 807 (N.D. IOWA 2006) AS §1983 ACTION
 14 COULD PROCEED WHEN SEEKING MONETARY DAMAGES, AND AS OF OCTOBER 26, 2007, THE PLAINTIFF
 15 WITH ACTUAL AND CREDITED TIME WOULD HAVE, RATHER WILL HAVE SERVED 3 YEARS OF THE SENTENCE
 16 AND HAVE 6 MONTHS ACTUAL TIME LEFT, ALL FOR A VIOLATION OF A MISDEMEANOR. - THUS THE §1983
 17 ACTION MUST BE ALLOWED TO PROCEED, AND IF APPROPRIATE A STAY PENDING STATE PROCEEDING
 18 TERMINATION

19 ARGUMENT

20 III

21 COUNT 1

22 §1983 ACTION, DID NOT ACCRUE WHILE CHARGES PENDING
 23 UNDER CALIFORNIA LAW CAL. GOV. CODE § 945.3 A CIVIL ACTION AGAINST A PEACE OFFICER
 24 IS PROHIBITED WHILE CHARGES ARE STILL PENDING, THEREFORE §1983 ACTION DID NOT ACCRUE
 25 IN CASE * SED 195342 UNTIL OCTOBER 30, 2006, WHEN CHARGE VEHICLE CODE 23152 (a) WAS
 26 PRONOUNCED.

27 PROBABLE CAUSE

28 OFFICER GONZALEZ NEEDED MORE THAN REASONABLE SUSPICION, TO ARREST PLAINTIFF ON

1 DECEMBER 2, 2005, WHICH HE DID NOT HAVE, AS IN *BARLOW V. GROUND*, 943 F.2d 1132 (9th Cir 1991)
 2 ARREST 63.4(3) - TO ARREST A PERSON, POLICE NEED MORE THAN REASONABLE SUSPICION; THEY MUST
 3 HAVE PROBABLE CAUSE, U.S.S.A. CONST. AMEND 4, THERE WAS NO PROBABLE CAUSE OF AN INDIVIDUAL,
 4 WHO COMMITTED NO TRAFFIC VIOLATIONS, AND WAS REAR-ENDED BY ANOTHER INDIVIDUAL, THE PROBABLE
 5 CAUSE WAS ON THE INDIVIDUAL AT FAULT, THE CONCLUSIVE FINDING THAT THE OR PLAINTIFF WAS NOT
 6 TO BE PRESUMED TO BE DRIVING OVER THE LIMIT, UNDER THE INFLUENCE, DEEMED THE FIELD SOBRIETY
 7 TEST IRRELEVANT, AND TO SAY HE COULD HAVE MADE AN ARREST FOR CALIFORNIA PENAL CODE 647,
 8 DRUNK IN PUBLIC, HE DID NOT, EVEN AFTER THE ACQUITTAL OF VC 23152 (b), HE HAD AMPLE
 9 OPPORTUNITY, THIS IS RELEVANT AS TO A MALICIOUS ACT, PER THE JURY NEVER KNEW OF THE ACQUITTAL
 10 AND WHO IS TO SAY, THE JUDGE KNEW THE FACTS OF PROBABLE CAUSE, PER THE SECOND TRIAL PROCEEDED
 11 AS THOUGH THE FIRST TRIAL NEVER EXISTED, AS IN COUNT 2 OF THIS CLAIM. OFFICER GONZALEZ IN
 12 THE SECOND TRIAL, STILL INSISTED AND TESTIFIED TO A PROBABLE CAUSE FOR DRIVING UNDER THE
 13 INFLUENCE, FOR 647 WAS NEVER ENTERTAINED, ALSO THAT AFFECT WOULD HAVE THE COURT SYSTEM
 14 BACKED UP, WITH OFFICER'S CLAIMING AFTER THE FACT, I COULD HAVE DONE THIS OR THAT, BUT THIS
 15 WAS A MALICIOUS ACT. THERE WAS NO PROBABLE CAUSE TO CHARGE THE CRIME IN THE FIRST PLACE,
 16 AS IN *HARTMAN V. MOORE* (U.S. 2006) IN AN ACTION FOR MALICIOUS PROSECUTION AFTER AN ACQUITTAL,
 17 A PLAINTIFF MUST SHOW THAT THE CRIMINAL ACTION WAS BEGUN WITHOUT PROBABLE CAUSE FOR
 18 CHARGING THE CRIME IN THE FIRST PLACE.

19 OFFICER GONZALEZ SHIELD FOR QUALIFIED IMMUNITY IS LOST, WHEN HE VIOLATED CONSTITUTIONAL
 20 RIGHTS WELL ESTABLISH, FOR FABRICATING EVIDENCE TO MISLEAD A MAGISTRATE/JUDGE OR JURY, FOR
 21 ENHANCEMENT OF PROBABLE CAUSE, DUE PROCESS, DEPRIVATION OF LIBERTY, UNREASONABLE SEIZURES, 9th
 22 *ZAMORA V. CITY OF BELEN*, 383 F. SUPP. 2d 1315 (D.N.M. 2005) CIVIL RIGHTS 1375, WHERE AN
 23 OFFICER KNOWS, OR HAS REASON TO KNOW, THAT HE HAS MATERIALLY MISLED A MAGISTRATE ON THE BASIS
 24 FOR A FINDING OF PROBABLE CAUSE, AS WHERE A MATERIAL OMISSION IS INTENDED TO ENHANCE THE
 25 CONTENTS OF THE AFFIDAVIT AS SUPPORT FOR A CONCLUSION OF PROBABLE CAUSE, SHIELD OF QUALIFIED
 26 IMMUNITY IS LOST UNDER § 1983

27 MALICIOUS PROSECUTION

28 1. OFFICER GONZALEZ, EVEN AFTER THE ACQUITTAL, 2. KNOWING WITHOUT PROBABLE CAUSE,

1 PURSUED TO A LEGAL TERMINATION OF A CONVICTION FOR DUI, AND EVENTUAL UNAUTHORIZED CONFINEMENT
 2 IN STATE PRISON FOR VEHICLE CODE 23152 (a), ITSELF DOES NOT AUTHORIZE IMPRISONMENT IN STATE
 3 PRISON 3. OFFICER GONZALEZ WAS APPOINTED THE PEOPLE'S INVESTIGATOR, THEREFORE A BIAS OBLIGATION,
 4 HE FABRICATED EVIDENCE, ADMITTED TO ERRORS, CHANGE UNDER OATH STATEMENTS, HIS MOTIVES WERE
 5 INTENTIONAL, AND COLLABORATED WITH PROSECUTION'S ACTIONS IN THIS CLAIM, AFTER THE ACQUITTAL,
 6 REASONABLY THEIR WAS NO REASON TO CONTINUE FOR THEIR VANS NO PROOF A CRIME OCCURRED WITHOUT
 7 MALICIOUS ACTIVITY, AS IN "MONTGOMERY V. DESIMONE (1998) 159 F.3d 120, CIVIL RIGHTS (33,
 8 COURT OF APPEALS HELD THAT MUNICIPAL JUDGE FINDING OF PROBABLE CAUSE FOR ARREST DID NOT AUTOMATICALLY
 9 PREVENT ARRESTEE FROM ESTABLISH ABSENCE OF PROBABLE CAUSE FOR PURPOSE OF MALICIOUS PROSECUTION
 10 CLAIM," ALSO FOR OFFICER GONZALEZ'S MOTIVE WAS EVIL, KNOWING HIS ACTIONS WERE TO LEAD TO
 11 CONVICTION AND SUBSEQUENT INCARCERATION, AS IN "GONZALEZ V. BRATON, 147 F. SUPP. 2d 180,
 12 (S.D.N.Y.2001) EVEN IF AN INITIAL ARREST IS VALID A CLAIM FOR FALSE IMPRISONMENT A 4th AMENDMENT
 13 INTEREST MAY BE IMPLICATED, IF A PLAINTIFF IS THEREAFTER UNREASONABLY DETAINED, UNLAWFULLY
 14 IMPRISONED HIM WITHOUT PROBABLE CAUSE IN VIOLATION OF RIGHT AGAINST UNREASONABLE SEIZURES,"
 15 WHICH IN THIS CASE PLAINTIFF HAS DILIGANTLY BEEN SEEKING IMMEDIATE RELEASE UPON APPEAL FOR
 16 UNAUTHORIZED SENTENCE BY PENAL CODE VIA PETITION'S, MOTIONS, SINCE MAY OF 2007, ALSO "GONZALEZ V.
 17 BRATON, SUPRA - CIVIL RIGHTS 275 (1) PUNITIVE DAMAGES MAY BE AWARDED IN 1983 ACTION WHEN
 18 A DEFENDANT'S CONDUCT IS SHOWN TO BE MOTIVATED BY EVIL MOTIVE OR INTENT, OR WHEN IT
 19 INVOLVES RECKLESS OR CALLOUS INDIFFERENCE TO THE FEDERALLY PROTECTED RIGHTS OF OTHERS,"
 20 AS IN THIS CASE SEE DEAN V. EARLE (W.D. KY. 1994) 806 F. SUPP.
 21 COMPENSATORY DAMAGES FOR MALICIOUS PROSECUTION IS ASSERTED, AFTER THE ACQUITTAL OFFICER
 22 GONZALEZ HAD NO REASONABLE GROUNDS FOR BELIEVING THAT A DUI. COMPLAINT WAS TRUE, see
 23 CENTERS V. DOLLAR MARKETS (CAL. 1965) 222 P.2d 136
 24 THE PLAINTIFF ASSERTS DAMAGES "MONETARY" UNDER CAL CIVIL CODE § 3333, A CHAIN
 25 OF CAUSATION, IF THE ARREST NOT BEEN MADE AND MANICIOUS ACTION, THE FALSE IMPRISONMENT,
 26 AUTHORIZED OR UNAUTHORIZED WOULD NOT HAVE OCCURRED, SEE GILL V. EPSTEIN 44 CAL. RPT. 45
 27 (1965), CRUEL AND UNUSUAL PUNISHMENT, GENERAL RULE OF DAMAGES IN CASES OF FALSE IMPRISONMENT, THAT THE
 28 PERSON CAUSING A WRONGFUL IMPRISONMENT IS LIABLE FOR ALL NATURAL AND PROBABLE CONSEQUENCES

ARGUMENT

IV

IF A JUDGE DEALS WITH AN INDIVIDUAL IN A JUDICIAL CAPACITY, JUDGE IS LIABLE FOR MONEY DAMAGES IN A § 1983 ACTION ONLY IF JUDGE ACTS IN CLEAR ABSENCE OF ALL JURISDICTION

86 F.3d 1080 SIMMONS V. CONGER 1996,

JUDICIAL IMMUNITY IS NOT A BAR IN A § 1983 SUIT TO PROSPECTIVE INJUNCTIONS, INJUNCTIVE RELIEF AGAINST A JUDICIAL OFFICER ACTING IN HIS/HER JUDICIAL CAPACITY

• EMOTIONAL DISTRESS - THE INJURY MAY BE PURELY MENTAL OR EMOTIONAL - CONCURRENT PHYSICAL INJURY NEED NOT OCCUR "JAMES V. BOARD OF SCHOOL COM'RS OF MOBILE COUNTY, ALA. D.C. ALA. 1979, F.SUP. 705 412 1257

JUDGE ALBERT HARUTUNIAN III LOST HIS ABSOLUTE IMMUNITY, WHEN HE VIOLATED CIVIL RIGHTS ACT, § 1981 EQUAL RIGHTS BY DOING SO, CAN BE HELD RESPONSIBLE FOR U.S. CONSTITUTION VIOLATIONS FOR THE PURPOSE OF SEEKING MONETARY DAMAGES

• JUDGE HARUTUNIAN VIOLATED DUE PROCESS, WHEN HE DENIED EVIDENCE FAVORABLE TO THE PLAINTIFF, EVIDENCE IS FAVORABLE, IF IT EITHER HELPS THE DEFENDANT OR HURTS THE PROSECUTION, SEE "BRADY V. MARYLAND (1963) 379 US 83, JUDGE HARUTUNIAN VIOLATED DUE PROCESS OF 14th WHEN HE SENTENCE THE PLAINTIFF TO A SENTENCE NOT AUTHORIZED BY PENAL CODE/VEHICLE CODE, AS IN DEAN LEARLE (W.D. KY. 1994) 866 F.SUP. - CIVIL RIGHTS 14th - FALSE IMPRISONMENT IS ESTABLISH WHEN IMPRISONMENT WAS WITHOUT LEGAL AUTHORITY, THE MAXIMUM PERIOD OF A MISDEMEANOR IS IN COUNTY JAIL AND MAY NOT BE COMMITTED FOR A PERIOD IN EXCESS OF A YEAR CAL. JUR. 3D § 48

• THE PLAINTIFF WAS SENTENCED WITH A STATEMENT OF AGGRAVATION PRIOR CONVICTION THAT WERE FABRICATED UNTRUE, SEE UNITED STATES V. TUCKER 92 S. CT 589 (1972), TOWNSEND V. BURKE 334 US 736, 68 S. CT 1252, 92 L. ED 1690

• JUDGE HARUTUNIAN HAS REFUSED TO CORRECT AN UNAUTHORIZED SENTENCE BY PENAL CODE/VEHICLE CODE SINCE MAY OR APRIL OF 2007 VIA PETITION AND MOTION TO VACATE A VOID JUDGMENT THEREFORE SUBJECTING PLAINTIFF TO CRUEL AND USU UNUSUAL PUNISHMENT

• UNDER CAL GOVERNMENT CODE § 820 LIABILITY FOR INJURIES, A PUBLIC EMPLOYEE IS LIABLE FOR INJURY CAUSED BY HIS ACT OR OMISSION TO THE SAME EXTENT AS A PRIVATE PERSON, SEE "CIRCUIT COURT OF APPEALS, SECOND CIRCUIT, KNICKERBOCKER STEAMBOAT CO. V. CUSACK NO. 100 (1995)

1 GOVERNMENT CODE § 822.2

2 A PUBLIC EMPLOYEE IS LIABLE FOR AN INJURY, IF HE IS GUILTY OF ACTUAL FRAUD, CORRUPTION OR ACTUAL
3 MALICE

4 CIVIL CODE § 3333, BREACH OF OBLIGATION OTHER THAN CONTRACT, THE MEASURE OF DAMAGES IS
5 THE AMOUNT WHICH WILL COMPENSATE FOR ALL THE DETRIMENT PROXIMATELY CAUSED, WHETHER IT COULD HAVE
6 BEEN ANTICIPATED OR NOT, CIVIL CODE PERSONAL RIGHTS § 52, DENIAL OF CIVIL RIGHTS OR
7 DISCRIMINATION, DAMAGES CIVIL BY PEOPLE OR PERSON AGGRAVED; INTERVENTION - UNLAWFUL PRACTICE
8 COMPLAINT (A) WHOEVER DENIES, AIDS OR INCITES A DENIAL, OR MAKES ANY DISCRIMINATION OR
9 DISTINCTION IS LIABLE (D) WHENEVER AN ACTION HAS BEEN COMMENCED IN ANY COURT SEEKING
10 RELIEF FROM DENIAL OF EQUAL PROTECTION OF THE LAWS UNDER 14 AMEND TO THE CONSTITUTION
11 OF THE UNITED STATES ON ACCOUNT OF RACE, COLOR, RELIGION

12 ARGUMENT

13 V

14 WHEELER MOTION - BATSON VIOLATION

15 PLAINTIFF ASSERTS DISTRICT ATTORNEY DAN LINK USAGE OF PEREMPTORY CHALLENGE TO SYSTEMATICALLY
16 EXCLUDE COGNIZABLE GROUP "AFRICAN AMERICAN", "BLACK" DISTINGUISHED BY RACIAL AND ETHNIC GROUPS
17 VIOLATED THE 6TH AMENDMENT OF THE CONSTITUTION - RIGHT TO AN IMPARTIAL JURY, SEE "ADPACA V. OREGON
18 U.S. OR. 1972, 92 S. CT. 1628, 406 U.S. 404, 32 L. ED. 2D 184, ALSO PEOPLE V. WHEELER, 1978,
19 BATSON V. KENTUCKY, 476 U.S. 79 (1986), ARIZONA V. FULMINANTE, 499 US 279 (1991), MILLER-EL V. COCKRELL
20 537 U.S. 322 (2003)

21 BRADY VIOLATION

22 SUPPRESSION BY DISTRICT ATTORNEY DAN LINK "PROSECUTION" OF EVIDENCE FAVORABLE TO DEFENDANT DAN
23 WHICH DEFENSE COUNSEL WAS DENIED, VIOLATES DUE PROCESS, WHERE EVIDENCE WAS MATERIAL TO GUILT
24 SEE KYLES V. WHITLEY (U.S. 1A 1995) 115 S. CT 1555, ZAMORA V. CITY OF BOSTON 383 F. SUPP. 2D 1316
25 (D.N.M. 2005), ALSO SEE KYLES V. WHITLEY, 1995 U.S. 115 S. CT 1555, BRADY V. MARVANO (1963) ³⁷³ U.S.

26 COLLATERAL ESTOPPEL - DOUBLE JEOPARDY

27 PLAINTIFF ASSERTS HE HAD A RIGHT TO CLAIM THE ACQUITTAL FROM THE PREVIOUS TRIAL, AND WHEN
28 DISTRICT ATTORNEY DAN LINK, PRESENTED EVIDENCE TO IMPLY THE PLAINTIFF WAS DRIVING OVER THE

1 LIMIT, AND TO STATE THE PLAINTIFF KNOWS HE WAS DRIVING OVER THE LIMIT, AND THEN THE JURY
 2 INSTRUCTORS TO PRESUME AND CONCLUDE THE PLAINTIFF'S BLOOD ALCOHOL WAS OVER THE LIMIT, AND
 3 WAS UNDER THE INFLUENCE OF ALCOHOL AT THE TIME OF THE ALLEGED OFFENSE WAS A BAR, PER
 4 THE PLAINTIFF WAS ACQUITTED OF THAT CHARGE IN A PREVIOUS TRIAL, PER THE ISSUE WAS LITIGATED IN
 5 THE FORMER PROCEEDING, IT WAS DECIDED AND THE FORMER PROCEEDING WAS FINAL AND ON THE MERITS,
 6 AND THE PLAINTIFF WAS THE SAME PARTY IN THE SAME ACTION

7 AS IN AYALA V. KC ENVIRONMENTAL HEALTH, 426 F. SUPP. 2d 1070 (E.D. CAL 2006) COLLATERAL
 8 ESTOPPEL APPLIES IN § 1983, AND UNITED STATE V. DE ANGELO 138 F. 2d 466 (1943) A RULE OF EVIDENCE
 9 IS RECOGNIZED WHICH PERMITS ACCUSED TO CLAIM FINALITY WITH RESPECT TO A FACT OR GROUP OF FACTS
 10 PREVIOUSLY DETERMINED IN HIS FAVOR UPON A PREVIOUS TRIAL, ALSO SEE "GUTIERREZ V. SUPERIOR COURT,
 11 29 CAL. RPT. 2d 376 (CAL. APP 2 DIST 1994)

12 FABRICATING EVIDENCE

13 DISTRICT ATTORNEY DAN LINK WAS ACTING AS A INVESTIGATOR IN FABRICATING EVIDENCE NOT A PROSECUTORIAL
 14 ACT, FOR, DID NOT PRODUCE ANY DOCUMENTS TO SUPPORT THE NUMEROUS CONVICTIONS FOR HIS
 15 STATEMENT OF AGGRAVATION, STATEMENTS CONTAINED IN A UNKNOWN PROBATION REPORT IS NOT PROOF,
 16 HE MADE A ASSUMPTION THAT PLAINTIFF IN 1993 WAS IN A PRISON CAMP, HE MADE A ASSUMPTION THAT THE
 17 1993 CONVICTION WAS A FELONY, HE CREATED 2 ARIZONA CONVICTIONS FOR DUI, FROM WHAT SOURCE,
 18 DON'T KNOW, PER THEY DON'T EXIST, HE PRESENTED A 1998 CASE AS A FELONY CONVICTION; FROM
 19 A MISDEMEANOR THAT WAS DISMISSED, THEREFORE HE WAS SEARCHING AND HIS INVESTIGATIONS WERE
 20 WRONG, HE DID NOT PROVIDE NO SUCH PROVEN FACTS, HE WAS ACTING IN A INVESTIGATORY ROLE
 21 AS NOT PROTECTED BY IMMUNITY, AND THIS WAS NOT MISTAKENLY DONE IT WAS INTENTIONAL,
 22 ALSO HIS ACTIONS WERE OF A COMPLAINING WITNESS, BECAUSE HE DID NOT RELY ON FACTS,
 23 SEE "MILSTEIN V. COCKEY (C.A.9 CAL. 2001) 257 F. 3d 1004 (9th CIR 2001, ALSO DAN
 24 LINK WAS ASSERTING PERSONAL KNOWLEDGE OF THE 1993 PRISON CAMP, AND AGAINST CAL RULE OF
 25 PROFESSIONAL CONDUCT 5-200^E (b) AS IN CRUZ V. KAUAI COUNTY CC-A 9 (HAWAII) 2002, MILSTEIN,
 26 SUPRA IT IS A 4th AMENDMENT RIGHT NOT TO HAVE A PROSECUTOR PERSONALLY ATTEST TO A FALSE STATEMENT
 27 OF A BIASED SOURCE WITH NO INVESTIGATION OF THE STATEMENTS TRUTH OR FALSITY
 28 AS IN KALINA V. FLETCHER 522 U.S. AT 131, 118 S. CT 562 (QUOTING U.S. CONSTITUTIONAL AMENDMENT

IV, Absolute immunity is not protected when the prosecutor personally attested to the equivalent of an affidavit to the truth, declaring to be correct a certification, petitioner performed an act that any competent witness might have performed, and thus was not entitled to absolute immunity, accord *Morley v. Walker* 175 F.3d 756, 760 (9th Cir. 1999) even with, rather when the person who makes the constitutionally required "oath or affirmation is a lawyer, the only function that he/she performed in given sworn testimony is that of a witness

As in case at hand Dan Link affirming that the Arizona convictions, 1993 and 1998 felony conviction in his non-existence statement of aggravation were true, which they were not, he was a witness and therefore not protected by absolute immunity

Attorneys may not seek to mislead a judge or jury by an artifice or a false statement of fact or law. CAL Rules of Prof Conduct 5-200 (B)

As in *Bishop Private Trust v. County of Inyo*, 275 F.3d 893 (9th Cir. 2002) under California law, elected county district attorney was engaging in investigatory, not prosecutorial act and thus was acting as county officer, rather than state officer and thus county could be held liable under 1983

Prosecutor is not immune for activities that are administrative duties or investigative functions that do not relate to prosecutor's preparation for initiation of prosecutions, and for these activities prosecutor may only claim qualified immunity, see *Spack v. Whitley* 971 F.2d 1197 (9th Cir. 1997)

Municipal liability may be imposed under § 1983 for a single decision by municipal policy maker under appropriate circumstances see *Pfiff v. City of Cincinnati* (U.S. Ohio 1986) 106 S.Ct. 1292

The plaintiff was sentenced on the basis of assumptions concerning his criminal record, which were materially untrue see *Townsend v. Burke*, supra, such a result whether caused by carelessness or design is inconsistent with due process

Zamrey v. Coffey 221 F.3d 342 (2nd Cir. 2000)

People v. Lockett, 195 Cal.Rptr. 119 (Cal.App. 1 Dist. 1983) court probation, and a statement appellant was on felony probation was erroneous

Malicious Prosecution

After the acquittal, there was no probable cause for charging V.C. 23152 (a) see

1 HARTMAN V. MOORE (U.S. 2006)

2 COUNTY OFFICERS

3 AS IN BISHOP PAIUTE TRIBE V. COUNTY OF INYO, 275 F.3d 893 (9th Cir. 2002) UNDER THE CALIFORNIA
 4 CONSTITUTION, DISTRICT ATTORNEYS IN CALIFORNIA ARE DEFINED IN ARTICLE XI OF THE CONSTITUTION, ENTITLED
 5 "LOCAL GOVERNMENT", ARTICLE XI SECTION 4 OF THE CALIFORNIA CONSTITUTION PROVIDES THAT "COUNTY
 6 CHARTERS SHALL PROVIDE FOR AN ELECTED DISTRICT ATTORNEY

7 * CAL. GOVERNMENT CODE ; DISTRICT ATTORNEYS CAN BE REMOVED FROM OFFICE FOLLOWING THE ACCUSATION
 8 OF THE COUNTY GRAND JURY

9 * CALIFORNIA LAW EXPLICITLY STATES THAT THE DISTRICT ATTORNEY IS A COUNTY OFFICER, CAL. GOV. CODE § 24000(a),
 10 § 24000(b), THE COUNTY BOARD OF SUPERVISORS SET THE SALARIES OF THE DISTRICT ATTORNEY, CAL.
 11 GOV. CODE § 25300, DISTRICT ATTORNEY MUST BE REGISTERED TO VOTE IN THEIR RESPECTIVE COUNTIES
 12 CAL. GOV. CODE § 24001

13 * THE COUNTY HAS THE AUTHORITY TO SUPERVISE THE DISTRICT ATTORNEY'S CONDUCT AND USE OF PUBLIC FUNDS
 14 CAL. GOV. CODE § 25303

15 * SUPERVISION BY THE ATTORNEY GENERAL DOES NOT ALTER THE STATUS OF DISTRICT ATTORNEY AS ELECTED
 16 COUNTY OFFICIALS. "BREWSTER V. COUNTY OF SHASTA 112 F.SUPP.2d 1185, 1190 (E.D. CAL 2005)
 17 SEE ALSO PEOPLE V. BROPHY, 120 P.2d 946, 953 (CAL. DIST. CT APP. 1942) (NOTHING THAT CONSTITUTIONAL
 18 OVERSIGHT DOES NOT CONTEMPLATE ABSOLUTE CONTROL AND DIRECTED OF SUCH OFFICIALS

19 * UNDER CALIFORNIA CONSTITUTION ART XI SECTION 4 COUNTY CHARTERS SHALL PROVIDE FOR (A)
 20 A GOVERNING BODY OF 5 OR MORE, ELECTED (1) BY DISTRICT, (C) AN ELECTED SHERIFF, AN
 21 ELECTED DISTRICT ATTORNEY, (E) THE POWERS AND DUTIES OF GOVERNING BODIES, THEREFORE DISTRICT
 22 ATTORNEY IS COUNTY OFFICER WITH FINAL POLICY MAKING AUTHORITY

23
 24 I CRAIG SMITH DECLARE UNDER THE PENALTY OF PERJURY OF THE LAWS OF THE
 25 STATE OF CALIFORNIA THAT THE ABOVE STATEMENTS IS TRUE AND CORRECT, EXECUTED AT THE
 26 RICHARD J. DONOVAN CORRECTIONAL FACILITY, SAN DIEGO, CALIFORNIA ON THE 22 DAY OF
 27 OCTOBER, 2007

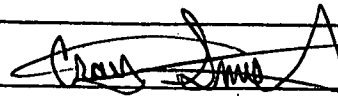
28 

EXHIBIT COVER PAGE

CASE # 163775

1993

EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

1. 1993 MISDEMEANOR CONVICTION, JUNE 1, 1993, IMPASSE IS RECHARGED - EXHIBIT 93.2
2. 1993 CHANGE OF PLEA, NO REFERRAL TO PROBATION, OR INVESTIGATION AS REQUIRED FOR A FELONY CONVICTION, JUNE 8, 1993 - EXHIBIT 93.4
3. 1993 MINUTES SENTENCING, PROBATION OFFICER WAIVED "COURT PROBATION - CONDITIONAL SENTENCE", NO WEAPON RESTRICTION AS REQUIRED FOR FELONS,

NUMBER OF PAGES TO THIS EXHIBIT: 4 PAGES.

FORMAL FELONY PROBATION CHECKED IS ERRONEOUS, PER FORMAL PROBATION IS MEASURED BY THE EXISTENCE OF SUPERVISED PROBATION - EXHIBIT-SC 1993

4. RELIEF OF CONDITIONAL SENTENCE, PC 1203.4A, IMPACT WITH PRIOR FELONY CONVICTION
JURISDICTION: (Check only one) NOT APPLICABLE - EXHIBIT 93.6

- ☐ CDCR Administrative Appeal
- ☐ California Victim Compensation
And Government Claims Board
- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme
- ☐ United States District Court
- ☐ United States Circuit Court
- ☐ United States Supreme Court

COUNTY CLERK'S DEPARTMENT - CRIMINAL DIVISION

DATE: JUN 1 - 1993

HON. KEVIN J. MURPHY

Clerk: BETTY HAWKINS

Reporter: SHARON STUGEN / ☒ Not reported Deputy: MIKE MC GEE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

VS.

Craig Smith

NO. 163775

Defendant(s).

Defendant is/is not present, his counsel, C. Beate

, is/is not present, and Deputy D. A. M. Duffy

is present, this being the time fixed for pre-trial hearing.

WHEREUPON, THE COURT ORDERS, The following, pursuant to stipulation/
on Motion of the _____

- ☒ The matter is pre-tried and an impasse is declared.
- ☐ Trial Date to remain as previously set on: _____
- ☐ Trial Date is Cont'd. to: _____ ☐ Deft. waives time.
- ☐ Pre-Trial Cont'd. to: _____
- ☐ Trial Date of: _____ is vacated.
- ☐ Matter is Placed Off Calendar.
- ☐ B/W for Failure to Appear, Bail \$ _____ ☐ C. R. Revoked
- ☐ Bail Forfeiture Stayed & Cont'd. to: _____
- ☐ Matter placed on After Arraign. Calendar _____ at P.M.
for Hearing on a Motion to Reset _____
- ☐ STANDBY FOR TRIAL
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA CRIMINAL MINUTES, CHANGE OF PLEA

Case No. 163775 PEOPLE V. Craig SmithDate: 6-8-93Honorable Daniel E. GreedClerk [Signature]Reporter Cathy [Signature]Sheriff [Signature]Conditional Plea YesLive in program after serving 6 monthsDeputy District Attorney Christine [Signature]Counsel for Defendant [Signature]

CHARGES:

ct 1-23/52 (A) CUC & 3pm (F)ct 2-23/52 (B) CUC & 3pm (F)ct 3-14601.2 CUC (Misd) & 1pmct 4-14601.1 CUC & 3pm (Misd)

Matter regularly before the Court this date, counsel and defendant being present.

James Right, Ad. max. 3pm (F),
Ad. max. 3pm (F),
Ad. max. 3pm (F)After examination and permission by the Court, defendant's plea of Not Guilty is withdrawn, and defendant enters a plea of ~~Guilty~~ No Contest ct 1; ct 3ct 1 & 4 Dismissed

WHEREUPON, the matter is referred to the Adult Probation Officer for investigation and is set

for hearing on 6-8-93, in 24 Master Sentencing Calendar, ORCourtroom 24, at 9:15 m. Time waived for sentencing

ARMED ALLEGATION	<input type="checkbox"/>	Admitted	<input type="checkbox"/>	Denied	<input type="checkbox"/>	Dismissed
DEGREE	<input type="checkbox"/>	First	<input type="checkbox"/>	Second	<input type="checkbox"/>	Not Fixed <input type="checkbox"/> Hearing <input type="checkbox"/>
PRIORS	<input checked="" type="checkbox"/>	Admitted	<input type="checkbox"/>	Denied	<input type="checkbox"/>	Mute <input type="checkbox"/> Stricken <input type="checkbox"/>
	<input type="checkbox"/>	Hearing pending				

AGENCY 4313 Dates of priors 8-19-90; 11-22-90; 8-4-91;CUSTODY STATUS In

CO-DEFENDANTS (Including dispositions)

OTHER SENTENCE CHOICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
BRANCH HALL OF JUSTICE

COURT I.D.

4 | 3 | | |

PEOPLE OF THE STATE OF CALIFORNIA VERSUS

DEFENDANT: CRAIG SMITH

AKA:

REPORT OF: ☐ DEATH SENTENCE
☐ INDETERMINATE SENTENCE
☒ OTHER SENTENCE CHOICE

AMENDED
REPORT ☐

☒ PRESENT

☐ NOT PRESENT

CASE NUMBER(S)

163775 -A

-B

-C

-D

-E

DATE OF HEARING (MO/DAY/YR)

06-08-93

DEPT. NO.

35

JUDGE

DANIEL E. CREED

CLERK

P. COOPER

REPORTER

CATHY LINCOLN

COUNSEL FOR PEOPLE

CHRISTINE HUDSON

COUNSEL FOR DEFENDANT

CARL BEATTY, P.D.

PROBATION NO. OR PROBATION OFFICER

WAIVED

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY/MISDEMEANORS):

☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT (NUMBER OF PAGES)

ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____ (NUMBER OF PAGES)				YEAR OR DATE COMMITTED	DATE OF CONVICTION			CONVICTED BY			654 STAY
COUNT	CODE	SECTION NUMBER	CRIME		MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	PLEA	
2	VC	23152(B)& 3	Prs Driv w/ 08% B.A. or more	93	06	08	93			X	
3	VC	14601.2 & 1	Pr Driving with Suspended Lic.	93	06	08	93			X	

2. ENHANCEMENTS (charged and found true) TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.: For each count list enhancements horizontally. DO NOT LIST enhancements charged but not found true or stricken under § 1385. DO NOT LIST TIME imposed. For indeterminate terms, report enhancements and time imposed for them on the abstract.

Count	Enhancement	Yes or No	Enhancement	Yes or No	Enhancement	Yes or No	Enhancement	Yes or No	Enhancement	Yes or No

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER. List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under that same section, repeat it for each enhancement (e.g., If 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times. DO NOT LIST enhancements not found true. Also enter here any enhancement not provided for in space 2. DO NOT LIST TIME imposed. For indeterminate terms, report enhancements and time for them on the abstract.

Enhancement	Yes or No	Enhancement	Yes or No	Enhancement	Yes or No	Enhancement	Yes or No	Enhancement	Yes or No

4. ☐ Defendant was sentenced TO DEATH on counts

5. ☐ Defendant was sentenced to State Prison for an indeterminate term:

A. ☐ For LIFE, or a term such as 15 or 25 years to life, WITH POSSIBILITY OF PAROLE on counts

B. ☐ For LIFE WITHOUT the possibility of parole on counts

C. ☐ For other term prescribed by law on counts (Life Terms are on "A" and "B")

6. ☐ Counts are alternate felony/misdemeanors and were DEEMED MISDEMEANORS.

A term in jail ☐ was ☐ was not ordered.

7. ☒ For counts 2 & 3 the defendant was placed on FELONY probation.

A. (1) ☐ Sentence pronounced and execution of sentence was suspended; or

(2) ☒ Imposition of sentence was suspended.

B. ☒ Conditions of probation included

☒ Jail Time

☒ Fine

8. ☐ Other dispositions

A. ☐ Defendant was committed to California Youth Authority.

B. ☐ Proceedings suspended, and defendant was committed to California Rehabilitation Center.

C. ☐ Proceedings suspended, and defendant was committed as a Mentally Disordered Sex Offender

D. ☐ Proceedings suspended, and defendant was committed as a mentally incompetent.

☒ Formal Probation ☒ Granted 3 years ☐ For period co-terminous with Jail Sentence ☐ Defendant committed to CYA ☐ Advised of Appeal Right

☒ County Jail 12 Mos. with credit for time served of 163 days ☐ Consecutive/Concurrent ☐ Pre-Processing date at M
After serving 6 mos. may complete sentence in a Residential Alcohol Program approved by Adult Probation Officer.

☐ Jail sentence to be served on Weekend Work Program ☐ Weekends ☐ Work Furlough Recommended ☐ No Programs

☐ Jail sentence stayed until at M. ☐ Review date in Department ☐ Perform hours unemp. commun. service work

☒ Restitution Fine \$200 ☐ Drug Program Fee \$ ☒ Alcohol Education Fee \$ 50 ☒ Fine \$ 500 ☐ Penalty \$ 850 ☐ Concurrent w/sentence at \$

☐ Lab Fee \$ ☐ Attorney Fees ordered \$ ☐ APO Rept. Fee \$ ☒ Probation Cost /mo ☐ other Fees:

☐ Counseling ☒ No Alcohol ☒ or where sold ☐ Complete Alcohol/Drug Prgm ☐ Release to representative

☐ Weapons seized destroyed ☐ Restitution

☐ Empl/Trg

§39.23

CRIMINAL LAW PROCEDURE AND PRACTICE

1136

<i>Statute Granting Relief</i>	<i>Professional License</i>	<i>Use as Prior To Enhance Sentencing</i>	<i>Serve as Juror</i>
10. Health & S C §11361.5 (petty marijuana offenses)	No public agency to deny or revoke license once relief granted (Health & S C §11367(b)).	No. Health & S C §11361.7.	Yes. See CCP §203(a)(5).
11. Welf & I C §1772 (YA parolees)	Not disqualified; limited peace officer exception.	Yes, under circumstances listed in Welf & I C §1772(b)(3); <i>People v Shields</i> (1991) 228 CA3d 1239, 279 CR 403.	Not disqualified. See CCP §203(a)(5).

<i>Statute Granting Relief</i>	<i>Must Applicant Inform Employer of Conviction?</i>	<i>Impeach Criminal Defendant With Prior Felony Conviction</i>
1. Pen C §1203.4	2 Cal Code Regs §7287.4(d)(1)(B) prohibits employers from asking about misdemeanors dismissed under Pen C §1203.4.	Evid C §788(c).
2. Pen C §1203.4a	Probably not.	Not applicable.
3. Pen C §1210.1(d)	Generally no. But must disclose in peace officer and public office applications, for licenses, and for contracting with the State Lottery.	Unknown.
4. Pen C §4853 (direct pardon)	Not stated.	Yes. <i>People v Hardwick</i> (1927) 204 C 582, 269 P 427.
5. Pen C §§4852.01-4852.21 (pardon based on certificate of rehabilitation)	Yes.	No. Evid C §788(b).
6. Welf & I C §781 (seal juvenile records)	Need not disclose. Welf & I C §781(a).	Case deemed never to have occurred.
7. Pen C §851.8 (person factually innocent)	No. See Pen C §851.8(f).	No conviction. See Pen C §851.8(f).
8. Pen C §§1000, 1000.5, 1001.9, 1001.31, 1001.55 (diversion)	In general, same as Pen C §1203.4; exception regarding peace officer application.	Probably not. See Pen C §1000.4.
9. Welf & I C §3200 (narcotic addicts)	Has same effect as dismissal under Pen C §1203.4, discussed above. Welf & I C §3200(b). But still a drug prior.	Yes, with regard to most drug offenses.

EXHIBIT COVER PAGE

CASE # 205489

1998

EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

1. 1998 POST-JUDGMENT DESIGNATIONS FROM MISDEMEANOR TO FELONY, IMPROPER AND ILLEGAL, EXHIBIT 2000-1-09, ON 11-22-2000
2. AFTER ILLEGAL SENTENCING ON 2000-01 RELEASE # CC074866, COURT VACATED ITS POST-JUDGMENT DESIGNATION, AND DISMISS CASE # 205489, NEVER A FELONY CONVICTION, ON 3-2-2001, EXHIBIT 2001-1-26

NUMBER OF PAGES TO THIS EXHIBIT: 2 PAGES.**JURISDICTION: (Check only one)**

- ☐ CDCR Administrative Appeal
- ☐ California Victim Compensation
And Government Claims Board
- ☒ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme
- ☐ United States District Court
- ☐ United States Circuit Court
- ☐ United States Supreme Court

Case 3:07-cv-02077-BTM-RBB

Document 1

Filed 10/25/2007

Page 43 of 57

SUPERIOR COURT
190 WEST HEDDING ST
SAN JOSE, CA 95110

OPLE VS. CRAIG SMITH
39939 STEVENSON COMMON
FREMONT, CA 94538
PORTER D. WALLER
F. ATTY. LEMPERT, DENNIS D.A. D. FEHDERAU
ARGES M(001)PC12021(A)(1)

DATE

11/22/2000 9:00 AM DEPT.
08/14/1961 CAC5935148
D. SEPULVEDA CWH046 M
HEARING ON MOTIONS
SJ-04313-2860 - RAMIREZ
D-SET -10000
APO C. FAZO

CLERK
HEARING
AGENCY
STATUS

TW Y
SUPO: P527

NEXT APPEARANCE DATE(S)

☐ Defendant Present ☐ Not Present
☐ WFA ☐ Arr'd
☐ 977 Waiver ☐ on file ☐ Filed @ this time
☐ T/W ☐ TNW ☐ T/W W/D ☐ for Sent
☐ Pleads NG ☐ NGBRI ☐ Entered by Court
☐ Other
☐ Priors ☐ Alleg/Enh ☐ Admit ☐ Denied
☐ Stip Complaint serve as Information
☐ Ref/Appt Pub Def ☐ Conf Decl ☐ Conf App
☐ ☐ Relieved ☐ Entered
☐ Waives
☐ Proof Of

☐ Attorney Not Present ☒ Present
☐ Arr ☐ Plea ☐ ID Cnsl ☐ Prob/Sent
☐ Bail/OR Hrg ☐ Rect Dr Rpt ☐ Diversion
☐ Prelim ☐ TSET ☐ PT Conf ☐ S/B MTC
☐ Jury ☐ Court trial ☐ Peo/Def Waive Jury
☐ Advised NGBRI ☐ Doubt Decl 1368PC
☐ Crim Proc ☐ Susp ☐ Reinst ☐ Term
☐ Drs ☐ Appt
☐ Subm on rept ☐ Found
☐ Ref'd ☐ Max Term
☐ Committed

Assigned to:
☐ Interp
☐ Notice Eligibility Filed Cnts
☐ Diversion ☐ Granted ☐ Denied ☐ Pay fee
☐ Bail ☐ Exon ☐ Forfeited Bond #
☐ Forfeiture set aside ☐ Bail Reinstated
☐ \$ costs by
OR/SOR ☐ Revoked ☐ Reinstated
☐ B/W Set Aside ☐ Recalled ☐ Reassump Filed
☐ B/W Ordered; Bail ☐ B/W Stayed
☒ Hrg on Motion
☐ Motion ☐ Den ☐ Granted ☐ O/C ☐ Subm

PLEA

☐ Amended on face
Conditions ☐ None ☐ No State Prison ☐ Include Viol/Prob
☐ Jail/Prison Term of
☐ Dismissal/Striking
☐ Advised ☐ Max Pen ☐ Parole/Probation ☐ Appeal ☐ Immig ☐ Registration PC290/HS11590/PC457.1 ☐ Future serious felony prior
☐ Waives Constit Rights ☐ Written Waiver filed ☐ PC17 Red ☐ Granted ☐ Denied ☐ Waiver ☐ Harvey Ship
☐ Pleads ☐ Guilty ☐ Nolo Contendere to following viol & admits enhs (see below) ☐ Factual Basis found ☐ Findings stated
☐ Bunnell Subm on Prelim Evid/Trans ☐ Court finds Deft
☐ Ref'd to Prob Dept ☐ Waives Formal Report ☐ Waives referral ☐ Probation Denied
☐ Execution ☐ Imposition of sentence suspended for probation period

PROB

☐ Court ☐ Formal Probation Granted _____ days/mos/years ☐ Prob term on release
☐ Report to APO & maintain contact as directed ☐ w/n 3 days ☐ upon release
☐ Court finds Violation/No Violation ☐ Deft Admits Violation of Probation
☐ Prob Reinst/Continued Original Terms & Conditions ☐ Prob Term No further Penalties
☐ Revoked ☐ Modified ☐ Extended to
☐ Complete Commun Altern Program ☐ Perform _____ hrs Volunteer Work
☐ Submit Search/Testing ☐ Educ/Voc Trg/Empl ☐ DVPO to issue ☐ Advised PC12021
☐ Not own/possess deadly weapons ☐ Weapon ordered destroyed
☐ No contact w/victim or family/co-defts unless appr by APO ☐ No pager/port comm device
☐ No alco/ drugs or where sold ☐ Restitution
☐ Complete _____ cnsl/prgm
☐ Not drive w/o valid lic & ins ☐ license surrendered ☐ Reissue DL
☐ Partic in ☐ Delete ☐ Reinst ☐ 1st Offender/Mult Off Prgm ☐ Rept w/n
☐ Lic susp/rev/restr for _____ to, from, during ☐ Work ☐ Alco prgm ☐ VC
☐ Ignit Interlock Dev ☐ ordered _____ yrs ☐ waived Veh ☐ impound ☐ Not impounded
☐ Gang orders: No insignia, tattoos, assoc w/gang members, etc. ☐ PC 290.2 (DNA TEST) Ordered ☐ PC 1202.1 (AIDS TEST) Ordered
Other

FINES

Pay to ☐ Court ☐ DOR ☐ AR Fee by
Count \$ _____ +PA \$ _____
Count \$ _____ +PA \$ _____
☐ Concur/Consec w/Prison/Jail @ _____ /day
☐ purs to HS11350(d)
R/F \$ _____ ASF \$ _____
DPF \$ _____ CJAF \$ _____
LAB \$ _____
AEF \$ _____ PINV \$ _____ max
Atty \$ _____ PSUP \$ _____ /mo max
Total Amount Due \$
☐ Ref'd to DOR to determine ability to pay
☐ Crt finds deft ☐ able ☐ not able to pay
☐ Payments granted/modified @ \$ _____ /mo
Commencing
☐ PC 290.2 (DNA TEST) Ordered ☐ Aids Education Program

CONVICTION / JAIL / PRISON

Count	F/M	Violation	Trm/Yrs	Enhancement	Yrs/S	Prison	County Jail

☐ See Attachment Page for additional charges

☐ Sentence Deemed Served ☐ Ordered to report to Local Parole

PRIORS Alleged & Found True/Admitted

Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Total

CTS = _____ act + _____ (4019) = _____ Total days

TOTAL TERM

VIOLATION DATE: 02/27/1998

☐ Advised _____ years parole ☐ Appeal rights
Straight time ☐ Weekends ☐ Weekend Work ☐ PC1209 Fee Ordered/Waived ☐ EMP rec ☐ Eligible / not elig EMP/PSP/WF/CoParole
Stay Surrender/Transp to _____ @ _____ M or sooner ☐ Pre-process _____ AM/PM
of CJ susp ☐ Release to _____
mandated into Cust ☐ No Bail Allowed ☐ Bail ☐ Set @ ☐ Increased ☐ Reduced to \$
mains released on ☐ Release @ this time on ☐ OR ☐ SOR ☐ Bail
DEPUTY CLERK

SUPERIOR COURT
190 WEST HEDDING STREET
SAN JOSE, CA 95110

CASE NO. 205489
CEN 98007280
DEPT. 25

PEOPLE VS. CRAIG SMITH
39939 STEVENSON COMMON
FREMONT, CA 94538
HON. LEON P. FOX
D. WALLER
HARMON
F(001)PC12021(A)(1)

DATE 03/02/2001 9:00 AM
CLERK D. SEPULVEDA
HEARING HEARING ON MOTIONS
AGENCY SJ-04313-2860 -RAMIREZ
STATUS I-SET -NBA
APO TW Y
SUPO: P527

D.A. K. STORTON

NEXT APPEARANCE DATE(S)

<input checked="" type="checkbox"/> Defendant Present	<input type="checkbox"/> Not Present	<input type="checkbox"/> Attorney Not Present	<input checked="" type="checkbox"/> Present	<input type="checkbox"/> Interp
<input type="checkbox"/> WFA	<input type="checkbox"/> Arr'd	<input type="checkbox"/> Arr	<input type="checkbox"/> Plea	<input type="checkbox"/> ID Cris
<input type="checkbox"/> 977 Waiver	<input type="checkbox"/> on file	<input type="checkbox"/> Rect Dr Rpt	<input type="checkbox"/> Diversion	<input type="checkbox"/> Notice Eligibility Filed Cnts
<input type="checkbox"/> T/W	<input type="checkbox"/> TNW	<input type="checkbox"/> PT Conf	<input type="checkbox"/> S/B MTC	<input type="checkbox"/> Diversion
<input checked="" type="checkbox"/> Pleads NG	<input type="checkbox"/> NGBRI	<input type="checkbox"/> Jury	<input type="checkbox"/> Court trial	<input type="checkbox"/> Exon
<input type="checkbox"/> Other	<input type="checkbox"/> Entered by Court	<input type="checkbox"/> Adv'd NGBRI	<input type="checkbox"/> Doubt Decl 1368PC	<input type="checkbox"/> Forfeited Bond #
<input type="checkbox"/> Priors	<input type="checkbox"/> Alleg/Enh	<input type="checkbox"/> Crim Proc	<input type="checkbox"/> Susp	<input type="checkbox"/> Forfeiture set aside
<input type="checkbox"/> Stip Complaint serve as Information	<input type="checkbox"/> Admit	<input type="checkbox"/> Reinst	<input type="checkbox"/> Term	<input type="checkbox"/> Bail Reinstated
<input type="checkbox"/> Ref/Appt Pub Def	<input type="checkbox"/> Conf Decl	<input type="checkbox"/> Drs	<input type="checkbox"/> Appt	<input type="checkbox"/> \$ costs by
<input type="checkbox"/> Conf App	<input type="checkbox"/> Entered	<input type="checkbox"/> Subm on rept	<input type="checkbox"/> Found	<input type="checkbox"/> OR/SOR
<input type="checkbox"/> Waives	<input type="checkbox"/> Relieved	<input type="checkbox"/> Ref'd	<input type="checkbox"/> Max Term	<input type="checkbox"/> Revoked
<input type="checkbox"/> Proof Of	<input type="checkbox"/> Committed	<input type="checkbox"/> B/W Set Aside	<input type="checkbox"/> Recalled	<input type="checkbox"/> Reinstated
		<input type="checkbox"/> Hrg on Motion	<input type="checkbox"/> B/W Ordered	<input type="checkbox"/> Reassump Filed
		<input type="checkbox"/> Motion	<input type="checkbox"/> Den	<input type="checkbox"/> B/W Stayed
			<input type="checkbox"/> Granted	<input type="checkbox"/> O/C
			<input type="checkbox"/> Subm	

HARMON By LIAN, DES

PLEA

☐ Amended on face

Conditions ☐ None ☐ No State Prison ☐ Include Viol/Prob

☐ Jail/Prison Term of

☒ Dismissal/Striking *nda cti 100*

☐ Advised

☐ Max Pen

☐ Parole/Probation

☐ Appeal

☐ Immig

☐ Registration PC290/MS11590/PC457.1

☐ Future serious felony prior

☐ Waives Constit Rights

☐ Written Waiver filed

☐ PC17 Red

☐ Granted

☐ Denied

☐ Arbuckle Waiver

☐ Harvey Stip

☐ Pleads

☐ Guilty

☐ Nolo Contendere to following viol & admits enhs (see below)

☐ Factual Basis found

☐ Findings stated

☐ Bunnell Subm on Prelim Evid/Trans

☐ Court finds Deft

☐ Ref'd to Prob Dept

☐ Waives Formal Report

☐ Waives referral

☐ Probation Denied

plea WITHDRAWN
Judgment VACATED

PROB

☐ Execution

☐ Imposition of sentence suspended for probation period

☐ Court

☐ Formal Probation Granted

☐ days/mos/years

☐ Prob term on release

☐ Report to APO & maintain contact as directed

☐ w/n 3 days

☐ upon release

☐ Court finds Violation/No Violation

☐ Deft Admits Violation of Probation

☐ Prob Reinst/Continued Original Terms & Conditions

☐ Prob Term No further Penalties

☐ Revoked

☐ Modified

☐ Extended to

☐ Complete Commun Altern Program

☐ Perform

☐ hrs Volunteer Work

☐ Submit Search/Testing

☐ Educ/Voc Trg/Empl

☐ DVPO to issue

☐ Advised PC12021

☐ Not own/possess deadly weapons

☐ Weapon ordered destroyed

☐ No contact w/victim or family/co-defts unless appr by APO

☐ No pager/port comm device

☐ No alco/ drugs or where sold

☐ Restitution

☐ Complete

☐ cnsl/prgm

☐ Not drive w/o valid lic & ins

☐ license surrendered

☐ Reissue DL

☐ Partic in

☐ Delete

☐ Reinst

☐ 1st Offender/Mult Off Prgm

☐ Rept w/n

☐ Lic susp/rev/restr for

☐ to, from, during

☐ Work

☐ Alco prgm

☐ VC

☐ Ignit Interlock Dev

☐ ordered

☐ yrs

☐ waived Veh

☐ Impound

☐ Not Impounded

☐ Gang orders: No insignia, tattoos, assoc w/gang members, etc.

☐ PC 290.2 (DNA TEST) Ordered

☐ PC 1202.1 (AIDS TEST) Ordered

☐ Aids Education Program

FINES

Pay to ☐ Court ☐ DOR ☐ AR Fee by

Count \$ +PA \$

Count \$ +PA \$

☐ Concur/Consec w/Prison/Jail @ /day

☐ purs to HS11350(d)

R/F \$ ASF \$

DPF \$ CJAF \$

LAB \$

AEF \$ PINV \$ max

Atty \$ PSUP \$ /mo max

Total Amount Due \$

☐ Ref'd to DOR to determine ability to pay

☐ Crt finds deft

☐ able

☐ not able to pay

☐ Payments granted/modified @ \$ /mo

Commencing

CONVICTION / JAIL / PRISON

Count	F/M	Violation	Trm/Yrs	Enhancement	Yrs/S	Prison	County Jail

☐ See Attachment Page for additional charges

☐ Sentence Deemed Served

☐ Ordered to report to Local Parole

PRIORS Alleged & Found True/Admitted

Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Total

CTS = act + (4019) = Total days

TOTAL TERM

☐ Advised years parole

☐ Appeal rights

☐ Straight time

☐ Weekends

☐ Weekend Work

☐ PC1209 Fee Ordered/Waived

☐ EMP rec

☐ Eligible / not ellg EMP/PSP/WF/CoParole

☐ Stay Surrender/Transp to

☐ Bal of CJ susp

☐ Release to

☐ Remanded into Cust

☐ No Bail Allowed

☐ Bail

☐ Set @

☐ Increased

☐ Reduced to \$

☐ Remains released on

☐ Release @ this time on

☐ OR

☐ SOR

☐ Bail

CLERK OF THE ABOVE ENTITLED COURT BY

DEPUTY CLERK

VIOLATION DATE: 02/27/1998

in this case

EXHIBIT COVER PAGE

VICTIM OF CRIME

EXHIBIT 5

DESCRIPTION OF THIS EXHIBIT:

1. LETTER AFTER CONVICTION ON CASE #SCD195342, ACKNOWLEDGING PLAINTIFF WAS A VICTIM OF A CRIME, EXHIBIT - 6 (A), 6-14-06
2. RESTITUTION FORM, EXHIBIT "SCD-04" 6-14-06

NUMBER OF PAGES TO THIS EXHIBIT: 2 PAGES.

JURISDICTION: (Check only one)

- ☐ CDCR Administrative Appeal
- ☐ California Victim Compensation
And Government Claims Board
- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme
- ☐ United States District Court
- ☐ United States Circuit Court
- ☐ United States Supreme Court

6 (A)

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Michael J. Aguirre

CITY ATTORNEY

June 14, 2006

CHRISTOPHER S. MORRIS
MARGARET G. JACOBO
ASSISTANT CITY ATTORNEYS

CRIMINAL DIVISION
1200 THIRD AVENUE, SUITE 700
SAN DIEGO, CALIFORNIA 92101-4103
TELEPHONE (619) 533-5500
FAX (619) 533-5505

CRAIG SMITH
1631 PENTECOST WAY, NO. #7
SAN DIEGO CA 92106

Dear Mr. Smith,

People vs. Alephonsion Deng
City Attorney Case Number EB3468 / M991587

Our records show that you were the victim of a crime committed on December 1, 2005. The person who committed this crime has been convicted. Now, the court may require that person to reimburse you if you had any out-of-pocket expenses because of the crime.

If you owe or had to pay any money as a result of this crime and want to be reimbursed, please fill out the enclosed form. Make sure we can read your writing. Then make two copies of any bills, receipts, or estimates you have for the damage you suffered. Send the completed form and two copies of the paperwork to our office. If you do not have receipts, please explain why.

We must receive your paperwork within thirty days of the date of this letter. The court will inform you of any restitution orders made in this case.

If the court orders you to be reimbursed, you have the right to convert the criminal restitution order into a civil judgement, which will make all civil remedies available to you. This conversion process is handled through the San Diego Superior Court. To get an order granting restitution to you enforceable as a civil judgment (SDMC form 546), you must appear at court in the department in which the defendant was sentenced, at 220 West Broadway in downtown San Diego, with your criminal case and restitution order. This conversion to a civil judgment is your responsibility.

Sincerely yours

MICHAEL J. AGUIRRE, City Attorney

By

B. Dreyer
Bernadette Dreyer
Restitution Clerk

RESTITUTION FORM

June 14, 2006

Case name: People vs. Alephonsion Deng

Case Number EB3468

CRAIG SMITH
1631 PENTECOST WAY, NO. #7
SAN DIEGO CA 92106

Your phone number:

To be reimbursed for any out-of-pocket expenses you had to pay due to this case, you must complete and return this form and your receipts WITHIN 30 DAYS of the date on the enclosed letter.

As part of this criminal case, you can be reimbursed only for your out-of-pocket expenses that were a direct result of the crime and that were not covered by insurance. You cannot be reimbursed through this case for "pain and suffering" or other emotional distress or intangible losses; you can seek those damages in a separate civil claim if you wish. If your insurance paid for your damages but you had to pay a deductible, you can be reimbursed through this criminal case for that deductible.

OUT-OF-POCKET EXPENSES: List only those expenses NOT reimbursed by insurance.

PROPERTY DAMAGE

Cost of repair or replacement

What property was damaged:

\$ _____

\$ _____

MEDICAL EXPENSES

Injury Treatment Facility

Cost

\$ _____

INSURANCE DEDUCTIBLE

Write the amount of any insurance deductible that you had to pay:

\$ _____

OTHER OUT-OF-POCKET EXPENSES

If you had any other out-of-pocket expenses from this case that have not been listed above and that were not covered by insurance, list them here. (Rental car expenses, lost wages, etc.)

Cost

\$ _____

\$ _____

TOTAL EXPENSES YOU WANT REIMBURSED:

Total: \$ _____

WHAT TO DO NOW

() Check here and return form to the below address if you have NO out-of-pocket expenses

() Check here if you are still under medical care as a result of this incident

ATTACH 2 COPIES OF YOUR RECEIPTS OR A LETTER EXPLAINING WHY YOU DO NOT HAVE RECEIPTS

Send this completed form and receipts to: Restitution Clerk
City Attorney's Office
1200 Third Avenue, Suite 700
San Diego, CA 92101

EXHIBIT COVER PAGE

LOSS WORK

EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

1. THIS IS A CONTRACT, I WAS JUST CONTRACTED FOR, ON 10-20-06, I RUN MY OWN BUSINESS, THIS ILLUSTRATES MY PAY-RANGE AND MY LOSS, CAN PROVIDE MORE PAPER WORK IF REQUIRED, CONTRACTS START AT 3-MONTHS - TO INDEFINITE EXHIBITS "LE.1 - "LE.2"

2

NUMBER OF PAGES TO THIS EXHIBIT: 2 PAGES.**JURISDICTION: (Check only one)**

✓ OTHER

- ☐ CDCR Administrative Appeal
- ☐ California Victim Compensation
And Government Claims Board
- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme
- ☐ United States District Court
- ☐ United States Circuit Court
- ☐ United States Supreme Court

This message has been scanned for known viruses.

From: kbrady@TCML.com
To: craig0814@aim.com
Subject: RE: The Computer Merchant
Date: Mon, 23 Oct 2006 8:24 AM

Hi Craig,

Thanks for the update. You can either send the paperwork over to Michelle Ward, or you can fax them over to me. My fax number is listed below. Thanks Craig.

Fax -- 781-878-4712

Best Regards,

Kyle Brady
IT Recruiter
The Computer Merchant Ltd.
800-617-6172 x4448
kbrady@tcml.com
www.tcml.com

From: craig0814@aim.com [mailto:craig0814@aim.com]

Sent: Friday, October 20, 2006 6:31 PM

To: Kyle Brady

Subject: Re: The Computer Merchant

Kyle, Printed off all the documents, I can fax them all back to Michelle Ward - Contracts correct? , I will take all the docments with me home and read over them and will probably fax them tomorrow, You should have them before Monday morning.

Thanks,

Craig Smith

-----Original Message-----

From: kbrady@TCML.com

To: craig0814@aol.com

Cc: craig0814@aim.com

Sent: Fri, 20 Oct 2006 1:32 PM

Subject: The Computer Merchant

Hi Craig,

First, I would like to say congratulations on being offered the position, as CSC was very impressed with your background, education, experience, and skills. I am sending you this e-mail as the e-mail from our contracts department, which contains several attachments, including a background investigation form, must be completed and sent back prior to starting. The drug test will be overnighted via FedEx/DHL, which will arrive probably tomorrow or Monday. This must also be completed prior to starting. If any questions arise, please feel free to call me, or my manager, Scott Parsons, as his contact information is listed below. Once again, Congratulations Craig!

P.S. Once you receive the paperwork, please fill them out as soon as possible, as the background investigation form take 1-2 days to process, as well as the drug test. The faster these are completed, the sooner you can start

at CSC. Also, our company does require that two (2) professional references be sent over, only one will be checked though.

Position:

Solaris Administrator

Client:

Computer Science Corporation (CSC) supporting Washington Mutual

Website:

WWW.CSC.COM

Duration:

3-Month Contract Position with Potential for Extension

Policies:

MUST BE A US CITIZEN OR GREENCARD HOLDER
MUST BE ABLE TO PASS A DRUG TEST AND BACKGROUND INVESTIGATION

Location:

Pleasanton, California

Rate:

\$50/hr W2

Duties/Responsibilities:

Provides support for moderately complex technical and team management activities related to system and database administration. Solaris 8/10 operating system, SUN hardware and familiarity with Veritas Cluster.

Best Regards,

Kyle Brady
IT Recruiter
The Computer Merchant Ltd.
800-617-6172 x4448
Mobile: 781-363-1549
kbrady@tcml.com
www.tcml.com

This message has been scanned by F-Secure Anti-Virus for Microsoft Exchange.
For more information, connect to <http://www.f-secure.com/>

```
size=2 width="100%" align=center>
```

Check Out the new free AIM(R) Mail -- 2 GB of storage and industry-leading spam and email virus protection.

#####

This message has been scanned by F-Secure Anti-Virus for Microsoft Exchange.
For more information, connect to <http://www.f-secure.com/>

EXHIBIT COVER PAGE

CASE # SCD195342
SCD195342
2006 SD

EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

1. FIRST TRIAL ACQUITTAL EXHIBIT-SCD-01
2. JURY VERDICT ON 4-17-06 MISDEMEANOR, VIOLATION CONVICTION, NO ENHANCEMENT FINDING
3. PRONOUNCEMENT OF JUDGMENT, MISDEMEANOR VIOLATION PRONOUNCED, NO FINDING OR PRONOUNCEMENT ON A ENHANCEMENT, PRISON PRIOR IMPROPERLY APPLIED TO MISD. VIOLATION EXHIBITS SCD-05; SCD-05.2 "

NUMBER OF PAGES TO THIS EXHIBIT: 5 PAGES.

4. ABSTRACT OF JUDGMENT, SAME AS PRONOUNCEMENT, NO ENHANCEMENT EXHIBIT SCD-06

JURISDICTION: (Check only one)

- ☐ CDCR Administrative Appeal
- ☐ California Victim Compensation
And Government Claims Board
- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme
- ☐ United States District Court
- ☐ United States Circuit Court
- ☐ United States Supreme Court

SCD-01

4.(B)

Superior Court of the State of California
FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

1Aa

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

CRAIG SMITH,

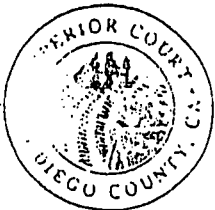
Defendant.

Department 39

Case No. SCD 195342
D.A. No. ABQ769

VERDICT

We, the jury in the above entitled cause, find the defendant,
Craig Smith, NOT Guilty of the crime of
[Guilty] [Not Guilty]
Driving While Having More than .08 Percent of Measurable Blood
Alcohol, in violation of Vehicle Code section 23152(b), as
charged in Count Two of the Information.



DATE: 10/25/06

Attest: A true copy,

Court Administrator

By C. Jensen Deputy

Dated

2/17/06

Redacted

OREPERSON

SUPERIOR COURT OF CALIFORNIA

County of San Diego

0204

DATE: 4-17-06

DEPT. 06

Reporter: L. TULLER

CSR No. 12392

PRESENT HON. ALBERT T. HARUTUNIAN III

Page 1 of 1

Clerk: C. SCHMIDT

Bailiff: A. AVILES

Release Status: custody/ \$50,000 bail set

Violations: Ct 1 - VC23152(a)

Defendant present

SCD195342
ABQ76901

PEOPLE OF THE STATE OF CALIFORNIA

By: Daniel F. Link, DDA

VS.

CRAIG SMITH

By: J. Gregory Turner
Retained

8:55 A. Aviles, SDSO, is sworn to take custody of the jury.

9:10 The jury is deemed present and escorted to the jury deliberations room to continue deliberations.

10:00 The Court is informed that verdicts have been reached. Counsel are ordered to return to court.

10:40 Counsel named above - DDA D. Link and retained Attorney J. Gregory Turner, are now present. The Defendant is also present. The 12 jurors are seated and court is again in session. **JURY TRIAL RESUMES.** The Presiding juror reports that a verdict has been reached. The Court reviews the verdict form and finds the form in order. At the direction of the Court, the Clerk reads the verdict, a redacted copy of which is attached, filed, and incorporated by reference herein.

THE DEFENDANT IS FOUND GUILTY OF COUNT NO. 1 - VC23152(a)

Counsel waive polling of the jury.

The verdict is ~~not~~ recorded. Reading of the verdicts, as recorded, is waived. The jury is released from the admonishment not to discuss the case, but cautioned to be truthful if they chose to speak of this matter. All juror information is ordered sealed. The jury is thanked and discharged from further service. All jurors exit the courtroom. Defendant waives statutory time for trial on allegations of prior convictions.

COURT TRIAL ON ALLEGATIONS OF PRIOR CONVICTIONS IS SET FOR MAY 15 AT 8:30, IN THIS DEPARTMENT.

The Probation Department is ordered to prepare a pre-sentence report.

PROBATION HEARING AND SENTENCING IS SET FOR MAY 15, AT 8:30, IN DEPARTMENT 6.

10:55 Court is adjourned. Defendant is remanded to the custody of the Sheriff with bail as set, at \$50,000.



ALBERT T. HARUTUNIAN III

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 10-30-06 AT 130p M.☒ CENTRAL ☐ NORTH ☐ EAST ☐ SOUTH

0212

PRESENT: HON A. HarutunianJUDGE PRESIDING DEPARTMENT 6CLERK N. Knight / C. SchmidtREPORTER A. PinedaCSR# 12670

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA

Smith, Craig
VS.
DEFENDANT

DEPUTY DISTRICT ATTORNEY

ATTORNEY FOR DEFENDANT (PD / APD / PCC / RETAINED)

VIOLATION OF VC23152(a)P.O. E. Santillan

ENH(S)

INTERP.

OATH ON FILE / SWN.

PRIOR(S)

LANGUAGE

DEFENDANT ☒ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

PREV

☐ DEFENDANT ADVISED OF RIGHTS AND ADMITS / DENIES A VIOLATION OF PROBATION ☐ WAIVES HEARING.PROBATION IS / REMAINS: FORMALLY / SUMMARILY ☐ REVOKED ☐ REINST ☐ MODIFIED ☐ CONT. ☐ ST&C ☐ TERMD. ☐ EXT. TO:☒ COMPLIANCE WITH PC 296 VERIFIED ORDERED ☐ WAIVES ARRAIGNMENT ☒ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION / EXECUTION OF SENTENCE IS SUSP.☒ PROBATION IS: ☒ DENIED ☐ GRANTED _____ YEARS (FORMAL/SUMMARY) TO EXPIRE _____☐ COMMITMENT TO SHERIFF FOR _____ DAYS. STAYED TO _____ / PNDG. SUCC. COMPL. OF PROB. ☐ PAROLE NOT TO BE GRANTED.☐ PERFORM _____ HRS / DAYS PSP / VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION / COURT BY _____☐ 4TH AMENDMENT WAIVER: ☐ IMPOSED. / ☐ REMAINS IN EFFECT. / ☐ DELETED. ☐ FORMAL PROB. CONVERTS TO SUMM. PROB. _____☐ FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. ☐ WORK FULFROGH, REPORT: _____☐ DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY ☐ PER WI 1737☒ DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS ☐ PER PC 1170(d).☒ FOR _____ LOWER / MIDDLE / UPPER / INDETERMINATE TERM OF 3 YEARS / MONTHS / TO LIFE☐ ON COUNT 1, CODE & NO. VC23152(a) ☐ PRINCIPAL COUNT. ☐ STIPULATED SENTENCE.☐ DEFENDANT SENTENCED PER PC 667(b)-(1) 1170.12. ☒ NOTICE OF FIREARMS PROHIBITION GIVEN PER PC 12021.☐ NO VISITATION PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.☒ DEFT. ADVISED REGARDING PAROLE / APPEAL RIGHTS. ☐ REGISTRATION PER PC 290 / HS 11590 / PC 457.1 / PC 186.30.☒ HIV TESTING PER PC 1202.1. ☐ DNA SAMPLING PER PC 296. ☐ PROTECTIVE ORDER ISSUED.☐ DEFENDANT TO PAY: FINE OF \$ _____ PLUS PENALTY ASSESSMENT. ☒ \$20 COURT SECURITY FEE. ☐ PROBATION COSTS. ☐ BOOKING FEES.REST. FINES: \$ 300 PER PC 1202.4(b). ☒ F/W PER PC 2085.5. \$ 300 PER PC 1202.44. ☐ PC 1202.45 SUSP. UNLESS PROB. / PAROLE REVOKD.☐ PROBATION HAVING BEEN FORMALLY REVOKED, THE PREVIOUS RESTITUTION FINE OF \$ _____, SUSPENDED PER PC 1202.44, IS NOW DUE.☐ RESTITUTION TO VICTIM(S) PER P.O.'S REPORT / REST. FUND PER PC 1202.4(f) OF \$ _____ / IN AN AMT. TO BE DETERMINED. ☐ JOINT & SEVERAL.☐ COURT-APPOINTED ATTORNEY FEES ORDERED IN THE AMOUNT OF \$ _____☐ INCOME DEDUCTION ORDER OF \$ _____ PER PAY PERIOD PER PC 1202.42 STAYED UNLESS DEFT. FAILS TO PAY VICTIM REST. NOTICE OF RIGHTS PROVIDED.☐ AT THE COMBINED RATE OF \$ _____ PER MONTH TO START 60 DAYS AFTER RELEASE / ON _____☐ DEFT. TO REPORT TO REVENUE & RECOVERY / COURT COLLECTIONS TO SET UP AN ACCOUNT FORTHWITH / WITHIN 72 HOURS OF RELEASE FROM CUSTODY.☒ ALL PROPERTY IMPOUNDED, SEIZED, OR HELD IN CUSTODY IN THIS CASE TO BE DISPOSED OF PER POSSESSING AGENCY'S POLICY.C S
U T
S A
T T☒ DEFENDANT REMANDED TO CUSTODY OF SHERIFF ☒ WITHOUT BAIL. ☐ WITH BAIL SET AT \$ _____☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND POSTED \$ _____ ☐ ON PROBATION. ☐ ON DEJ. ☐ ON OWN / SUPERVISED RECOGNIZANCE.☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON PROBATION. ☐ ON OWN / SUPERVISED RECOGNIZANCE. ☐ ON DEJ. ☐ THIS CASE ONLY.H
R
J
G
S☐ DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER WI 707.2.

CONTINUED TO / SET FOR _____ AT _____ M. IN DEPT. _____ ON MOTION

OF COURT / DDA / DEFENDANT / PROBATION OFFICER. REASON:

☐ EVIDENTIARY HEARING ON THE PROBATION REVOCATION ALLEGATION TO BE HEARD CONCURRENTLY WITH THE PRELIMINARY HEARING.W
R
I
N
T
S☐ BENCH WARRANT TO ISSUE, BAIL SET AT \$ _____ ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO _____☐ BENCH WARRANT ISSUED / ORDERED _____ IS RECALLED / RESCINDED.☒ BAIL IS ☒ EXONERATED. ☐ FORFEITED. AMOUNT \$ 50,000 BOND NO. 555014767-1BOND COMPANY Absolute Bail Bonds AGENT _____☐ PROCEEDINGS SUSPENDED ☐ PER PC 1368, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.)☐ PER WI 3051, ADDICTION OR DANGER OF ADDICTION. SERVICE OF PETITION: _____☐ PROBATION TO PREPARE SUPP. REPT. / SUBMIT POST-SENT REPT TO CDC PER PC 1203c. ☒ REPT. TO REG. OF VOTERS. ☒ DMV ABSTRACT. B.A.C. _____

The Court finds the Defendant has an extensive history of driving under the influence, several driving under the influence convictions, that the current offense was committed while the Defendant was on parole, and that there has been no remorse shown by the Defendant. The Court finds Defendant suffers from a substantial lack of credibility.

Sentence on Enhancement per PC 667.5(b) - 1 year Consecutive

TOTAL CUSTODY - 4 YEARS

JUDGE OF THE SUPERIOR COURT

**ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM**

[Not to be used for multiple count convictions or for 1/3 consecutive sentences]

0170

CR-290.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: **SAN DIEGO**PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: **CRAIG SMITH**DOB: **08-14-61**CASE NUMBER
SCD195342**FILED**
Clerk of the Superior Court**NOV 02 2006**By: **Michelle Knight, Deputy**

AKA:

CII#: **09220253**BOOKING #: **6450451**☐ NOT PRESENTCOMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT☐ AMENDED
ABSTRACT

DATE OF HEARING

10-30-06

DEPT. NO.

6

JUDGE

A. HARUTUNIAN, III

CLERK

M. KNIGHT

REPORTER

A. PINEDA

PROBATION NO. OR PROBATION OFFICER

21140736

COUNSEL FOR PEOPLE

D. LINK

COUNSEL FOR DEFENDANT

M. SCHUNK☐ APPTD.

Defendant was convicted of the commission of the following felony:

CNT.	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM (L, M, U)	TIME IMPOSED	
						JURY	COURT	PLEA		YRS.	MOS.
1	VC	23152(s)	DRIVING UNDER INFLUENCE OF ALCOHOL	2005	04-17-06	X			U	3	0

ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
PC667.5(a)	1							

☐ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

Restitution Fine(s): **\$800** per PC 1202.4(b) forthwith per PC 2085.5; **\$800** per PC 1202.45 suspended unless parole is revoked.

Restitution per PC 1202.4(f): ☐ \$_____ / ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
(*List victim name(s) if known and amount breakdown in item 7 below.)

Fine(s): \$_____ per PC 1202.5. \$_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS

Lab Fee: \$_____ per HS 11372.5(a) for counts _____. ☐ Drug Program Fee of \$150 per HS 11372.7(a).

TESTING: a. ☐ AIDS pursuant to PC 1202.1 b. ☒ DNA pursuant to PC 296 c. ☐ other (specify):

Other orders (specify): **\$20 COURT SECURITY FEE IMPOSED.**
FIREARM NOTICE PER PC12021 GIVEN.

3. TOTAL TIME IMPOSED EXCLUDING COUNTY JAIL TERM: **4** **0**

9. ☐ This sentence is to run concurrent with (specify):

10. Execution of sentence imposed

a. ☒ at initial sentencing hearing.

d. ☐ at resentencing per recall of commitment. (PC 1170(d).)

b. ☐ at resentencing per decision on appeal.

e. ☐ other (specify):

c. ☐ after revocation of probation.

DATE SENTENCE PROOUNCED	CREDIT FOR TIME SPENT IN CUSTODY	TOTAL DAYS: INCLUDING:	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS	<input checked="" type="checkbox"/> 4019 <input type="checkbox"/> 2933.1	TIME SERVED IN STATE INSTITUTION:	DMH	CDC	CRC
10-30-06		379	TIME 253	CREDITS 126					

2. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other (specify):

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

M. KNIGHT

DATE

11-02-06

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) SS CRAIG SMITH T09268
COUNTY OF SAN DIEGO)

[C.C.P. §§ 446, 2015.5; 28 U.S.C. §1746]

I, GLENN E. CRAV, am a resident of the State of California and am over the age of eighteen years and am not a party to the above-entitled action. My address is listed below.

On 10-23-07, I served the following documents:

CIVIL RIGHTS COMPLAINT UNDER 42 U.S.C. § 1983
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid in the United States Mail by delivering to prison officials for processing through the Institution's internal legal mail system at San Diego California, addressed as follows::

CLERK OF U.S. DISTRICT COURT
ROOM 4290
880 FRONT STREET
SAN DIEGO, CA. 92101-8900

ONCE RESTRICTION AT PRISON FACILITY, R.J. DONOVAN IS LIFTED, DUE TO SAN DIEGO COUNTY FIRES, PLAINTIFF, THEN BEING ABLE TO OBTAIN COPIES, WILL SEND 2 COPIES TO THE DISTRICT COURT AT ADDRESS ON THE LEFT

ALSO THE PLAINTIFF WILL SEND COPIES TO THE DEFENDANTS, UPON RESTRICTION BEING LIFTED TO THE "CLERK OF COURT" AT SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO

220 WEST BROADWAY
SAN DIEGO, CA. 92101

FOR TO BE DISPERSED, OR INDIVIDUAL, WHICHEVER APPROPRIATE COURT WILL BE NOTIFIED OF DISPERSE METHOD

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed in the County of San Diego, California on 10-23-07 Glenn E. Crav

GLENN E. CRAV
V35246 / 21-220K

P.O. Box 799005
San Diego, CA 92179-900 5

Pursuant to the holding of the United States Supreme Court in Houston v. Lack 108 S. Ct. 2379, 487 U.S. 266, 101 L.Ed.2d 245 (1988) and FRAP, Rule 4 (c) inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the Institution's internal legal mail procedures.

JS-44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1977, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Craig Smith

Dan Link

FILED

OCT 25 2007

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Craig Smith
PO Box 799005
San Diego, CA 92179
T-09268

ATTORNEYS (IF KNOWN)

'07CV 2077 BTM RBB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|---|---|---|
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 10/25/2007

SIGNATURE OF ATTORNEY OF RECORD

R. M. Wells